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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NELSON QUINTANILLA, ALEJANDRO AMAYA, ALEX
AMIR AREVALO, MAYNOR FAJARDO, WALTER GARCIA,
JOSE L. MARTINEZ, PRACELIS MENDEZ, OSMAR W.
PAGOADA, JAVIER QUINTANILLA, EDWIN RIVERA,
CARLOS ESCALANTE, KEVIN GALEANO, LERLY NOE
RODRIGUEZ, JOSE VEGA CASTILLO, JUAN
QUINTEROS, and MARCUS TULIO PEREZ,

Plaintiffs,

-against-

Case No:
09-CV-5331

SUFFOLK PAVING CORP., SUFFOLK ASPHALT CORP.,
LOUIS VECCHIA, CHRISTOPHER VECCHIA,
HELENE VECCHIA, and JOHN DOES 1-5,

Defendants.

-----X
September 30, 2011
9:30 a.m.
4875 Sunrise Highway
Bohemia, New York

EXAMINATION BEFORE TRIAL of
OSMAR W. PAGOADA, one of the Plaintiffs
herein, taken by the Defendants, pursuant to
Article 31 of the Civil Practice Law and
Rules of Testimony, and Notice and order,
held at the above-mentioned time and place,
before Karen LaMendola, a Professional Court
Reporter and Notary Public of the State of
New York.

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A P P E A R A N C E S:

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(NOT PRESENT)

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ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants
4875 Sunrise Highway
Bohemia, New York 11716

BY: SAUL ZABELL, ESQ.

ALSO PRESENT:

Margarita Arias, Interpreter

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification be and the same are
hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form of
the question shall be reserved to the time of
the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed and
sworn to before any officer authorized to
administer an oath, with the same force and
effect as if signed and sworn to before the
Court.

1

2 M A R G A R I T A A R I A S, the Spanish
3 Interpreter herein, was duly sworn to
4 interpret the questions from English
5 into Spanish and the answers from
6 Spanish into English to the best of her
7 ability:

8 O S M A R W. P A G O A D A, the Witness
9 herein, having been duly sworn through
10 the Interpreter, was examined and
11 testified as follows:

12 EXAMINATION BY

13 MR. ZABELL:

14 Q Would you please state your full
15 name for the record.

16 A Osmar Wilfredo Pagoada.

17 Q What is your current address?

18 A [REDACTED]

19 [REDACTED]

20 Q Mr. Pagoada, did I pronounce
21 that correctly?

22 A Yes.

23 Q Do you have any identification?

24 A No.

25 Q Then, how do I know who you are?

1 O. W. Pagoada

2 A What do you mean?

3 Q How do I know you are

4 Osmar Wilfredo Pagoada?

5 A Oh, that's me. No, I don't have

6 identification. I left my wallet at home.

7 Do you need something?

8 Q Yes.

9 A I think I have my passport only.

10 Q Okay.

11 A Yes, just that.

12 Q Okay.

13 A I'm going to get it.

14 Q It's in your car?

15 A Yes, I'm going to go get it.

16 Q We will wait for you, but no

17 more cologne.

18 (Whereupon, a recess was from

19 11:40 a.m. until 11:44 a.m.)

20 MR. ZABELL: Let the record

21 reflect that this individual has

22 provided me with a copy of his

23 passport.

24 Q Is that you?

25 A Yes.

1 O. W. Pagoada

2 MR. ZABELL: I'm just going to
3 go make a copy.

4 (Whereupon, a brief recess was
5 taken at this time.)

6 (Document consisting of a copy
7 of Mr. Pagoada's passport was marked as
8 Defendants' Exhibit Number 1, for
9 identification, as of this date.)

10 Q Mr. Pagoada, please take a look
11 at Defendants' Exhibit Number 1.

12 A (Witness complies.)

13 Q What is it?

14 A This is the map of my country.

15 Q It's going to be like that
16 today?

17 [REDACTED]

18 [REDACTED]

19 A [REDACTED].

20 Q [REDACTED]

21 A [REDACTED].

22 Q Are you sure?

23 A Yes.

24 Q Thank you, Mr. Pagoada.

25 Is that really a picture of you?

1 O. W. Pagoda

2 A Yes.

3 Q In what year was the picture
4 taken?

5 A In 2006, I think. 2006, 2005,
6 2006. I don't really remember.

7 Q Were you thinner then or
8 heavier?

9 A Less.

10 Q That's really you?

11 A Yes.

12 Q It looks like someone much
13 heavier than you.

14 MR. McNAMARA: It does not,
15 Counsel.

16 A No, that's me.

17 Q Were you bloated, retaining
18 water?

19 A No.

20 Q [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 A [REDACTED]

24 [REDACTED]

25 A [REDACTED]

1 O. W. Pagoda

2 Q [REDACTED]

3 [REDACTED]

4 A [REDACTED]

5 Q Do you know where you are now?

6 A Of course, I do.

7 Q Where are you now?

8 A New York.

9 Q What country is New York in?

10 A United States.

11 Q Very good. Is Honduras within
12 the United States?

13 A No.

14 Q So you did travel from Honduras
15 to the United States?

16 A Excuse me?

17 Q You did travel from Honduras to
18 the United States; correct?

19 A Yes.

20 Q [REDACTED]

21 [REDACTED]

22 A [REDACTED]

23 [REDACTED]

24 Q [REDACTED]

25 [REDACTED]

1 O. W. Pagoda

2 [REDACTED]

3 A [REDACTED]

4 Q [REDACTED]

5 A [REDACTED]

6 [REDACTED]

7 Q [REDACTED]

8 [REDACTED]

9 A [REDACTED] [REDACTED]

10 Q [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 MR. McNAMARA: Objection.

14 A What did you say? I didn't
15 understand.

16 Q You need to listen very closely.
17 Otherwise, this is going to be a very long
18 day.

19 Do you understand that?

20 A Yes.

21 Q [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 MR. McNAMARA: Objection.

25 A [REDACTED]

1 O. W. Pagoda

2 Q [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 A [REDACTED]

6 Q [REDACTED]

7 [REDACTED]

8 A [REDACTED]

9 Q [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 A [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED]

15 Q [REDACTED]

16 A [REDACTED]

17 [REDACTED]

18 Q [REDACTED]

19 [REDACTED]

20 MR. McNAMARA: Objection.

21 A [REDACTED].

22 Q [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 A [REDACTED].

1

O. W. Pagoda

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MR. McNAMARA: Objection.

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A

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Q

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A

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Q

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Q

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MR. McNAMARA: Objection.

14

A

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Q

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MR. McNAMARA: Objection.

18

A

19

Q

How often do you drive?

20

MR. McNAMARA: Objection.

21

A

Excuse me?

22

Q

23

A

24

25

Q

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A 

4 A question: Why aren't you
5 answering me? What does this case have to do
6 with my hours case?

7 Q I am the lawyer. You do not get
8 to ask me questions.

9 Do you understand that?

10 A But what does this have to do
11 with my case?

12 Q You do not get to ask questions.
13 You understand that your job here today is
14 simply to answer my questions.

15 Do you understand that?

16 A Yes.

17 Q I'm sorry. Speak up.

18 A Yes.

19 Q I am going to be asking you
20 questions.

21 Do you understand that?

22 A Yes.

23 Q You are required to provide
24 answers to my questions.

25 Do you understand that?

1 O. W. Pagoda

2 A Yes.

3 Q If you do not understand a
4 question I ask you, you have an obligation to
5 tell me you do not understand that question.

6 Do you understand that?

7 A Yes.

8 Q If you provide an answer to a
9 question I ask you, it will be assumed that
10 you understood that question.

11 Do you understand that?

12 A Yes.

13 Q Are you currently under the
14 influence of any drugs?

15 A No.

16 Q Are you currently under the
17 influence of any alcohol?

18 A No.

19 Q Can you think of any reason why
20 your ability to give truthful and accurate
21 testimony today would be impaired?

22 A Yes.

23 Q What reason can you think of?

24 A No. I'm ready to answer the
25 questions that you ask.

1 O. W. Pagoza

2 Q I know that you're ready to
3 answer the questions that I ask, but I asked
4 you if you can think of any reason why your
5 ability to give truthful and accurate
6 testimony would be impaired, and you said
7 yes.

8 A No.

9 Q So you're changing your answer
10 now?

11 MR. McNAMARA: Objection.

12 A (No verbal response.)

13 Q Are you changing your answer
14 now?

15 MR. McNAMARA: Objection.

16 A No.

17 Q You're not changing your answer?

18 A No.

19 Q Is there any reason why you
20 cannot give truthful and accurate testimony
21 today?

22 A No, there's none. I'll answer
23 whatever is necessary.

24 Q All of the questions I ask you
25 are necessary, whether you think so or not.

1 O. W. Pagoda

2 Do you understand that?

3 A Yes.

4 Q So you will not be asking me any
5 more questions today.

6 Do you understand?

7 A Yes.

8 Q If I ask you a yes-or-no
9 question, you are to give a yes-or-no answer.

10 Do you understand?

11 A Yes, yes.

12 Q You have an attorney here; do
13 you not?

14 A Yes.

15 Q Who is that attorney?

16 A Him (indicating). I don't know
17 what his name is.

18 Q You don't know what Patrick's
19 name is?

20 A I don't remember.

21 Q Me neither.

22 Did you prepare for this
23 deposition in any way?

24 A No.

25 Q Did you speak to your attorney

1 O. W. Pagoda

2 in preparation for this deposition?

3 A No.

4 Q I saw you in the hallway
5 speaking to your attorney.

6 A Oh, with him. No, I gave him my
7 name, and I said who I was. He asked me if I
8 was Osmar.

9 Q Why didn't you just answer that
10 honestly when I asked you?

11 A No, because I thought you were
12 talking about the other attorney. I didn't
13 know him before.

14 Q You didn't know the other
15 attorney before, or you didn't know this
16 attorney before?

17 MR. McNAMARA: Objection.

18 A Him (indicating). I didn't know
19 him.

20 Q Who's "him"?

21 A Him (indicating).

22 Q You still forgot his name;
23 right? I just said his name; do you not
24 remember it?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A No.

3 Q Would you like to know it?

4 A Yes.

5 Q His name is Patrick McNamara.

6 He is your attorney today.

7 A Yes.

8 Q He is here to make sure that

9 your flight occurs without incident.

10 Do you understand that?

11 MR. McNAMARA: Objection.

12 A No.

13 Q He's here to make sure that this
14 deposition goes without incident.

15 A Yes.

16 Q If you have a question, you can
17 ask him, but only after you answer the
18 question pending before you.

19 Do you understand that?

20 A Yes.

21 Q How many laws have you broken
22 today?

23 MR. McNAMARA: Objection.

24 A None that I know of.

25 Q 

1 O. W. Pagoda

2 A [REDACTED]

3 Q [REDACTED] ?

4 A [REDACTED].

5 Q [REDACTED]

6 MR. McNAMARA: Objection.

7 A Excuse me?

8 Q [REDACTED]

9 MR. McNAMARA: Objection.

10 A [REDACTED].

11 Q [REDACTED]

12 [REDACTED]

13 MR. McNAMARA: Objection.

14 A [REDACTED]

15 Q I'm glad that you're willing to
16 admit it now, but why didn't you just answer
17 the question when I asked it of you?

18 MR. McNAMARA: Objection.

19 A What, break the law? I don't
20 understand.

21 Q I'm not asking you to do it
22 again. I'm asking you: Why don't you answer
23 my questions honestly and accurately?

24 MR. McNAMARA: Objection.

25 A Yes, I'm answering them.

1 O. W. Pagoda

2 Q [REDACTED]

3 [REDACTED]

4 A [REDACTED]

5 [REDACTED]

6 Q Do you remember when I told you
7 that you don't get to ask me questions?

8 A So then, how am I going to
9 answer?

10 Q You're going to answer
11 truthfully and honestly. Do you want me to
12 repeat the question?

13 A Yes.

14 Q [REDACTED]

15 [REDACTED]

16 MR. McNAMARA: Objection.

17 A [REDACTED]

18 [REDACTED]

19 Q Just one?

20 A That I know of.

21 Q So there may be more?

22 MR. McNAMARA: Objection.

23 A (No verbal response.)

24 Q Answer the question, sir.

25 A [REDACTED]

1 O. W. Pagoda

2 [REDACTED]

3 [REDACTED]

4 Q [REDACTED]

5 [REDACTED]

6 MR. McNAMARA: Objection.

7 A [REDACTED]

8 Q [REDACTED]

9 A [REDACTED]

10 [REDACTED]

11 Q What is your country of origin?

12 A Honduras.

13 Q [REDACTED]

14 [REDACTED]

15 A [REDACTED]

16 Q [REDACTED]

17 [REDACTED]

18 MR. McNAMARA: Objection.

19 A [REDACTED].

20 Q [REDACTED]

21 [REDACTED]

22 MR. McNAMARA: Objection.

23 [REDACTED].

24 Q [REDACTED]

25 [REDACTED]

1 O. W. Pagoda

2 [REDACTED]

3 MR. McNAMARA: Objection.

4 A [REDACTED].

5 Q [REDACTED]

6 [REDACTED] --

7 MR. McNAMARA: Objection.

8 Q [REDACTED]

9 [REDACTED]

10 A (No verbal response.)

11 Q Is that correct?

12 A Yes.

13 Q [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 MR. McNAMARA: Objection.

17 A [REDACTED] [REDACTED]

18 Q Who was?

19 A [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED]

21 Q [REDACTED] [REDACTED]

22 [REDACTED]

23 MR. McNAMARA: Objection.

24 A [REDACTED]

25 Q [REDACTED]

1 O. W. Pagoda

2 A [REDACTED]

3 [REDACTED]

4 Q [REDACTED]

5 MR. McNAMARA: Objection.

6 A [REDACTED].

7 Q [REDACTED]

8 MR. McNAMARA: Objection.

9 A [REDACTED].

10 Q [REDACTED]

11 A [REDACTED].

12 Q [REDACTED]

13 MR. McNAMARA: Objection.

14 A [REDACTED]

15 Q Do you remember, generally?

16 A No.

17 Q You don't remember much; do you?

18 MR. McNAMARA: Objection.

19 A No.

20 Q Do you have a memory?

21 A Yes, but how am I going to

22 remember everything?

23 Q How would you characterize your

24 memory?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A It's hard to remember
3 everything.

4 Q Do you remember anything?

5 A Of what?

6 MR. McNAMARA: Objection.

7 Q Do you remember the last time
8 you shaved?

9 MR. McNAMARA: Objection.

10 A No.

11 Q Are you drinking that much water
12 because you're nervous?

13 A No, why?

14 Q Because when people drink as
15 much water as you've been drinking, it
16 indicates that they are nervous.

17 MR. McNAMARA: Objection.

18 A No, why should I be nervous?
19 I'm just coming to answer the truth.

20 Q Answer all the questions I ask
21 you, answer them truthfully, and you'll have
22 nothing to be nervous about.

23 A I'm not nervous.

24 Q [REDACTED]

25 [REDACTED]

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A [REDACTED].

4 Q [REDACTED]

5 [REDACTED]

6 MR. McNAMARA: Objection.

7 A [REDACTED]

8 Q [REDACTED]

9 [REDACTED]?

10 A [REDACTED].

11 Q Excuse me?

12 A [REDACTED].

13 Q Are you lying?

14 MR. McNAMARA: Objection.

15 A No.

16 Q [REDACTED]

17 [REDACTED]

18 A [REDACTED]

19 Q Did you ever pay taxes in the
20 United States?

21 A If I gave my Social Security
22 number to a company?

23 Q Yes.

24 A Oh, yes. I thought you were
25 saying to a person.

1 O. W. Pagoda

2 Q So you're changing your
3 testimony already?

4 MR. McNAMARA: Objection.

5 A [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 Q [REDACTED]
9 [REDACTED]

10 A Yes.

11 Q [REDACTED]
12 [REDACTED]

13 MR. McNAMARA: Objection.

14 Q [REDACTED]

15 A [REDACTED].

16 Q [REDACTED]
17 [REDACTED]

18 MR. McNAMARA: Objection.

19 A [REDACTED]
20 [REDACTED]

21 Q [REDACTED]

22 MR. McNAMARA: Objection.

23 A [REDACTED]

24 Q [REDACTED]
25 [REDACTED]

1 O. W. Pagoda

2 A [REDACTED]

3 MR. McNAMARA: Objection.

4 Q [REDACTED]

5 [REDACTED]

6 MR. McNAMARA: Objection.

7 A [REDACTED] [REDACTED]

8 [REDACTED]

9 MR. McNAMARA: I'd like all
10 discussions, questions, and answers
11 regarding Mr. Pagoda's Social Security
12 number, as well as taxes, tax records,
13 and any answers arising from questions
14 regarding those topics to be marked
15 confidential.

16 MR. ZABELL: I reject that
17 designation of confidential. I just
18 put it here on the record and in
19 writing. You have the terms and
20 conditions of stipulation of
21 confidentiality by which you are
22 obligated to follow to test the
23 appropriateness of your designation.
24 You are to do so.

25 MR. McNAMARA: Thank you,

1 O. W. Pagoda

2 Counsel.

3 MR. ZABELL: You're welcome.

4 Q [REDACTED]

5 [REDACTED]

6 A (No verbal response.)

7 Q [REDACTED] ?

8 A [REDACTED]

9 Q [REDACTED]

10 [REDACTED]

11 MR. McNAMARA: Objection.

12 A [REDACTED]

13 [REDACTED] [REDACTED]

14 Q [REDACTED]

15 [REDACTED]

16 MR. McNAMARA: Objection.

17 A [REDACTED].

18 Q [REDACTED]

19 A [REDACTED]

20 [REDACTED]

21 Q [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 MR. McNAMARA: Objection.

25 Q [REDACTED]

1 O. W. Pagoda

2 A [REDACTED].

3 Q [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q [REDACTED]

8 [REDACTED]

9 MR. McNAMARA: Objection.

10 A [REDACTED].

11 Q [REDACTED]

12 [REDACTED]

13 A [REDACTED].

14 MR. McNAMARA: Objection.

15 Q [REDACTED]

16 [REDACTED]

17 MR. McNAMARA: Objection.

18 A [REDACTED].

19 Q [REDACTED]

20 A [REDACTED] [REDACTED]

21 [REDACTED]

22 Q [REDACTED]

23 [REDACTED]

24 MR. McNAMARA: Objection.

25 A [REDACTED]

1 O. W. Pagoda

2 Q [REDACTED]

3 MR. McNAMARA: Objection.

4 A [REDACTED]

5 Q [REDACTED]

6 A [REDACTED]

7 [REDACTED]

8 Q [REDACTED]

9 [REDACTED]

10 MR. McNAMARA: Objection.

11 A [REDACTED] [REDACTED]

12 [REDACTED]

13 Q [REDACTED]

14 MR. McNAMARA: Objection.

15 A [REDACTED] ?

16 Q [REDACTED]

17 MR. McNAMARA: Objection.

18 A [REDACTED]

19 [REDACTED]

20 Q How about you give it me in the
21 language that you speak?

22 MR. McNAMARA: Objection.

23 A No, I can't give it to you. I
24 don't know how to explain it to you.

25 Q Try.

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A I already said no. What can I
4 explain to you?

5 Q You don't get to say no. If I
6 ask you to say something, you have to say it.

7 Am I clear?

8 A Yes, but how can I give you an
9 answer if I can't? I don't know how.

10 Q Why do you not know how?

11 MR. McNAMARA: Objection.

12 A Because I don't know how to
13 explain myself.

14 Q That's why we have an
15 interpreter here.

16 A Yes, but I don't know how to
17 explain it to you.

18 Q What do you not know how to
19 explain?

20 MR. McNAMARA: Objection.

21 A (No verbal response.)

22 Q If you play cat and mouse with
23 me all day, this is going to become very
24 uncomfortable for you.

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 Q Do you understand that?

3 A I'm not playing.

4 Q You clearly are because you know
5 answers, and you're not disclosing them. I
6 can tell you now that this is going to be
7 extremely uncomfortable, especially given all
8 the information that you've already disclosed
9 to me.

10 MR. McNAMARA: Objection.

11 Q Do you understand?

12 A I'm not playing with you.

13 Q [REDACTED]

14 [REDACTED]

15 MR. McNAMARA: Objection.

16 A [REDACTED]

17 Q [REDACTED]

18 [REDACTED]

19 MR. McNAMARA: Objection.

20 A [REDACTED]

21 Q [REDACTED]

22 [REDACTED]

23 A [REDACTED]

24 Q Did anybody explain to you that
25 if you lie under oath here today, you are

1 O. W. Pagoda

2 subject to penalties?

3 MR. McNAMARA: Objection.

4 A Why penalties?

5 Q If you lie, if you don't tell
6 the truth.

7 A I'm saying the truth.

8 Q Well, you've already lied to me
9 twice, and you've admitted it.

10 MR. McNAMARA: Objection.

11 A No, I haven't lied.

12 Q You've lied because you said you
13 don't break the law, or you haven't broken
14 the law today, and then, you have broken the
15 law today, and you've changed your answer
16 twice already.

17 MR. McNAMARA: Objection.

18 Q That is indicative of someone
19 who is telling a lie. Ask your attorney.
20 He'd be more than happy to confirm that for
21 you.

22 MR. McNAMARA: Objection.

23 A I'm not lying.

24 Q [REDACTED]

25 [REDACTED]

1 O. W. Pagoda

2 [REDACTED]

3 A [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q [REDACTED]

7 [REDACTED]

8 MR. McNAMARA: Objection.

9 A [REDACTED]

10 Q How do they know it?

11 A [REDACTED]

12 [REDACTED]

13 Q [REDACTED]

14 A [REDACTED]

15 [REDACTED]

16 Q [REDACTED]

17 MR. McNAMARA: Objection.

18 A [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q T [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A [REDACTED]

3 Q [REDACTED]

4 [REDACTED]

5 MR. McNAMARA: Objection.

6 A [REDACTED]

7 [REDACTED]

8 Q And you didn't give them any
9 documents that indicated you had a license;
10 correct?

11 MR. McNAMARA: Objection.

12 A No.

13 Q Are you sure?

14 A Yes.

15 Q Remember, I asked you not to lie
16 to me.

17 MR. McNAMARA: Objection.

18 A I'm not lying to you.

19 Q Where do you live?

20 A [REDACTED]

21 Q Where in [REDACTED]?

22 A At [REDACTED]

23 Q [REDACTED]

24 A [REDACTED].

25 Q Do you live in a house or an

1 O. W. Pagoda

2 apartment?

3 A House.

4 Q Do you own the house?

5 A No.

6 Q Who owns the house?

7 MR. McNAMARA: Objection.

8 A I don't remember. I only know
9 that his name is Samuel.

10 Q Do you pay rent?

11 A Yes.

12 Q How much rent do you pay?

13 A Four hundred.

14 Q Four hundred what?

15 A Four hundred.

16 Q Four hundred what?

17 A Dollars.

18 Q Per month or week?

19 A A month.

20 Q Do you live alone?

21 A No, with some friends.

22 Q Who are your friends?

23 MR. McNAMARA: Objection.

24 A Nelson.

25 Q Who else?

1 O. W. Pagoda

2 A And his partner.

3 Q Nelson's partner, or your
4 partner?

5 A Yes -- no, Nelson's.

6 Q Is that a sexual partner, or is
7 that a work partner?

8 A What do you mean? I don't
9 understand you.

10 Q What kind of partner is he?

11 A It's his wife.

12 Q Are they married?

13 A No, not married.

14 Q So it's not his wife?

15 MR. McNAMARA: Objection.

16 Q Correct?

17 A It's the mother of his children.

18 Q But not his wife?

19 MR. McNAMARA: Objection.

20 A Not his wife. Because for us,
21 the Hispanics, when you say "wife," you're
22 married legally, and if you're just
23 accompanied, it's very different.

24 Q What is Nelson's last name?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A Quintanilla.

3 Q Oh, Mr. Quintanilla. I'm
4 familiar with Mr. Quintanilla.

5 A Yes, I know.

6 Q So you live with Mr. Quintanilla
7 and his wife?

8 A Yes.

9 Q Anybody else living in that
10 house?

11 A His sister.

12 MR. McNAMARA: Objection.

13 Q What is Nelson Quintanilla's
14 compañero's name?

15 MR. McNAMARA: Objection.

16 A The name?

17 Q Si.

18 A Evelyn.

19 Q Does his girlfriend live with
20 you, as well?

21 MR. McNAMARA: Objection.

22 A Yes, she lives there.

23 Q So you all live together as one
24 happy family?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A Yes.

3 Q How many children live there?

4 A Two.

5 Q Whose children are they?

6 A Nelson's.

7 Q How old are they?

8 A I don't know. The daughter, I
9 think is -- his daughter is maybe five or
10 six, and the boy is a one year old, a
11 year-and-a-half. I don't know exactly his
12 age.

13 Q Are you married?

14 MR. McNAMARA: Objection.

15 A No.

16 Q Do you have any children?

17 A In my country.

18 Q How old are you?

19 A Thirty.

20 Q How many children do you have in
21 your country?

22 A One.

23 Q Do you provide for your child?

24 A Yes.

25 Q How do you provide for your

1 O. W. Pagoda

2 child?

3 A I send him money.

4 Q How often?

5 A I send him?

6 Q Yes.

7 A I send \$100, \$150 a month.

8 Q That's money that you earn;

9 correct?

10 A Yes.

11 Q Did you ever send more than \$100

12 or \$150 a month?

13 A No, very few times. Maybe when

14 it's necessary.

15 Q Who is your child living with?

16 MR. McNAMARA: Objection.

17 A With his mother.

18 Q Are you still dating his mother?

19 A No.

20 Q Were you ever married to his

21 mother?

22 A No.

23 Q Do you have a girlfriend here?

24 A No.

25 Q How old is your child?

1 O. W. Pagoda

2 A Nine.

3 Q How old was your child the last
4 time you saw him or her?

5 A Three.

6 Q Do you work?

7 A Yes.

8 Q Where do you work?

9 A I don't know the name of the
10 company very well. I don't have a card.
11 It's called Paving Perfection or something
12 like that. I don't know how to pronounce it
13 very well.

14 Q Do you have a pay stub from
15 them?

16 A No. I started working there a
17 short time ago.

18 Q So you haven't received any pay
19 from them?

20 MR. McNAMARA: Objection.

21 A No. I'm just starting with
22 them. It's my first week. I haven't
23 received any pay.

24 Q Are they paying you in cash or
25 check?

1 O. W. Pagoda

2 A No, no. I think they're going
3 to pay me by check.

4 Q Where are they located?

5 A The street is -- it's on 25,
6 Nichols Road.

7 Q If I wanted to go knock on their
8 door and see if you're telling me the truth,
9 how would I find them?

10 MR. McNAMARA: Objection.

11 A Excuse me, I didn't understand.

12 Q If I wanted to go knock on their
13 door to determine if you're telling me the
14 truth, how can I find that door?

15 A The address? You need the
16 address?

17 Q That's what I'm asking.

18 A I don't know the exact address.
19 It's -- I really don't know the address, but
20 it is on 25.

21 Q I see you pulling something out
22 from your pocket. Can you pull that out,
23 please?

24 MR. McNAMARA: Objection.

25 Counselor, your job is to ask

1 O. W. Pagoda

2 questions.

3 Q Is there something else in
4 there? Could you please pull that out, as
5 well?

6 MR. McNAMARA: I don't think
7 there's anything else, Counselor.

8 A No, my phone.

9 Q I see that there's something
10 else in there. It's coming out a little bit.
11 Go ahead and empty your pocket, please.

12 A You want to search me?

13 MR. McNAMARA: Don't tell him to
14 empty his pocket, Counselor.

15 Q Please empty your pocket.

16 MR. McNAMARA: You don't have to
17 empty your pocket.

18 MR. ZABELL: Sure, he does. If
19 he is looking at something during this
20 deposition --

21 MR. McNAMARA: He hasn't looked
22 at a thing.

23 MR. ZABEL: He absolutely has.

24 MR. McNAMARA: He has not. I've
25 been sitting right next to him.

1 O. W. Pagoda

2 MR. ZABELL: Patrick, do you
3 want to pull him out in the hallway to
4 see what he's got in his pocket, and
5 then bring him back in? I'll give you
6 that opportunity, but whatever is in
7 that pocket, I want to see what's going
8 on.

9 MR. McNAMARA: Let's take a
10 break, but he hasn't pulled anything
11 out of his pocket.

12 THE WITNESS: My telephone made
13 a noise. I got a message. Here it is
14 (indicating).

15 (Whereupon, a brief recess was
16 taken at this time.)

17 MR. McNAMARA: There's nothing
18 in his pockets. I just checked.

19 MR. ZABELL: Was it transferred
20 from his pocket to your pocket,
21 Counselor?

22 MR. McNAMARA: No, Counsel.
23 There is nothing in his pockets.

24 MR. ZABELL: I saw paper coming
25 out of his pocket.

1 O. W. Pagoada

2 MR. McNAMARA: First of all,
3 there is not paper in his pockets, and
4 stop demanding the witness to do things
5 like empty his pockets. Your job is to
6 ask questions.

7 MR. ZABELL: Which is exactly
8 what I'm doing.

9 MR. McNAMARA: There is nothing
10 in his pockets.

11 MR. ZABELL: I disagree.

12 Q Mr. Pagoada, where did you work
13 in 2005?

14 A Pave-Co -- no, no. Excuse me.
15 2006, Pave-Co. I got to this country in 2005
16 in September, towards the end of the year.

17 Q And where did you work in 2005
18 towards the end of the year?

19 A I worked in a mechanic shop.

20 Q Where?

21 A In Brentwood.

22 Q Did you earn money when you
23 worked in that mechanic shop?

24 A No, very little. I worked for a
25 short time.

1 O. W. Pagoada

2 Q Did you get paid by the hour?

3 A No. He would give me pay, \$300
4 a week.

5 Q In check?

6 A No.

7 Q In cash?

8 A Yes.

9 Q Did you file that on your tax
10 return?

11 MR. McNAMARA: Objection.

12 A No.

13 Q What's that?

14 A No.

15 Q And you worked there in all
16 of 2005 when you came to the country;
17 correct?

18 A Excuse me?

19 Q You worked there in all of 2005
20 when you came to the country; correct?

21 A Yes, a few months.

22 Q And you worked there for \$300 a
23 week, and you never reported that money on
24 your income tax return; did you?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A No, because it was a short time.

3 Q You know that that's a violation
4 of the law?

5 A Yes.

6 Q You are aware of that?

7 MR. McNAMARA: Objection.

8 A Yes, I had just come from my
9 country. I didn't know anything.

10 Q So you were ignorant?

11 A I had just come from my country.
12 I didn't know anything about what that was.

13 Q So you were ignorant?

14 MR. McNAMARA: Objection.

15 A Yes, I didn't know.

16 Q Are you still ignorant?

17 MR. McNAMARA: Objection.

18 A No.

19 Q In 2006, where did you work?

20 A Pave-Co.

21 Q Pave-Co?

22 A Pave-Co.

23 Q Is there a V in there?

24 A Yes -- no, it's -- how do you

25 write --

1 O. W. Pagoda

2 Q With a pen and a pencil. How do
3 you write?

4 MR. McNAMARA: Objection.

5 A It's Payco. The name of the
6 company is Payco.

7 Q Do you have any pay stubs from
8 Payco?

9 A Yes.

10 Q Where are they?

11 A I have one in my car.

12 Q Great. I'm going to want that.
13 Go get them, please. If you have anything
14 else in your car, bring it up now so that you
15 don't have to go back and forth; okay?

16 A What else do you need?

17 Q Anything you have; checks, pays
18 stubs, anything.

19 A I only have a check stub.

20 Q Anything that you have.

21 A I have the taxes that I made for
22 Payco, W-2.

23 Q Bring it all up.

24 MR. McNAMARA: Counsel, I'm
25 going to take a look at it to determine

1 O. W. Pagoda

2 if it's privileged.

3 MR. ZABELL: That's fine.

4 That's been the standard procedure.

5 A You don't need this (indicating)
6 anymore?

7 Q No, but you do. You don't want
8 to leave that in your car.

9 A I'm going to leave it.

10 Q I don't think you should.

11 (Whereupon, a brief recess was
12 taken at this time.)

13 MR. McNAMARA: Mr. Pagoda, when
14 we break for lunch, can you please go
15 home and get your remaining pay stubs,
16 and if you have any other W-2 tax
17 forms, would you please get those, as
18 well?

19 Q Do you understand that?

20 A Yes. The check stubs that I
21 have at home are the other ones from Payco.

22 Q Very important.

23 A Okay.

24 MR. ZABELL: Off the record.

25 (Whereupon, a discussion was

1 O. W. Pagoda

2 held off the record.)

3 MR. ZABELL: Tell him to tell
4 the truth, and we can keep going for
5 now.

6 MR. McNAMARA: I already told
7 him that, Counselor.

8 MR. ZABELL: Tell him again, do
9 me that favor.

10 MR. McNAMARA: Mr. Pagoda,
11 please continue to tell the truth.

12 THE WITNESS: Okay.

13 Q When was the last time you spoke
14 to Nelson Quintanilla?

15 A We live in the same house.

16 Q A wonderful answer, but not the
17 answer to the question I asked you.

18 When was the last time you spoke
19 to Nelson Quintanilla?

20 A We speak daily, because we live
21 in the same house, and we are very good
22 friends.

23 Q Did you speak to him today?

24 A No.

25 Q Did you speak to him yesterday?

1 O. W. Pagoda

2 A Yes. But maybe not about why
3 I'm coming here. We always talk. We always
4 talk.

5 Q Did you tell him that you were
6 coming here?

7 A Yes.

8 Q Did he tell you that he came and
9 met me?

10 A Yes.

11 MR. McNAMARA: Objection.

12 Q Did he tell you that I was a
13 pleasant man?

14 MR. McNAMARA: Objection.

15 A No. He didn't say anything
16 about that.

17 Q What did he say about his
18 deposition?

19 MR. McNAMARA: Objection.

20 A No, he only said that I could
21 bring my -- so that I didn't have to return
22 home, my check stubs.

23 Q But it looks like you're going
24 to have to return home anyway; right?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A I thought that that was enough
3 because I have a lot.

4 Q And your lawyers never told you
5 to bring everything; right?

6 MR. McNAMARA: Objection.

7 You don't have to answer that.

8 Q Did anybody ever tell you that
9 you had to turn over all of your
10 documentation?

11 A No.

12 Q Don't you think they should
13 have?

14 A (No verbal response.)

15 Q Yes?

16 A No one told me. Just Nelson
17 told me that you always ask for that, and
18 that's why I brought it.

19 Q Did Nelson tell you that he lied
20 to me?

21 MR. McNAMARA: Objection.

22 A To you? Why?

23 Q Because he did.

24 MR. McNAMARA: Objection.

25 A I didn't lie. What did I lie

1 O. W. Pagoda

2 about?

3 Q Pay attention.

4 Did Nelson tell you that Nelson
5 lied to me?

6 MR. McNAMARA: Objection.

7 A No, he didn't tell me that.

8 Q Did you ask him?

9 A No.

10 Q Did Nelson ever lie to you?

11 MR. McNAMARA: Objection.

12 A Not that I know of. I don't
13 know.

14 Q So he might have?

15 A I don't know.

16 MR. McNAMARA: Objection.

17 A He never lied to me that I know
18 of.

19 Q Have you ever lied?

20 A No.

21 MR. McNAMARA: Objection.

22 A Why? Why should I lie? There's
23 no reason to.

24 Q You've never lied?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A No.

3 Q [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 MR. McNAMARA: Objection.

7 A [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q [REDACTED]

14 [REDACTED]

15 MR. McNAMARA: Objection.

16 A [REDACTED]

17 Q [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 MR. McNAMARA: Objection.

21 A [REDACTED]

22 Q [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A [REDACTED].

3 Q [REDACTED]

4 [REDACTED]

5 MR. McNAMARA: Objection.

6 A [REDACTED]

7 Q [REDACTED]

8 [REDACTED]

9 MR. McNAMARA: Objection.

10 A [REDACTED]

11 [REDACTED]

12 Q [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 MR. McNAMARA: Objection.

16 A [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A [REDACTED]

3 Q [REDACTED]

4 [REDACTED]

5 MR. McNAMARA: Objection.

6 A [REDACTED].

7 Q Did you ever lie to a woman?

8 A No.

9 Q You never told a girl she looked
10 pretty when she didn't?

11 MR. McNAMARA: Objection.

12 A No. Because if I talk to a
13 woman, it's because I like her. If I don't
14 like her, then I'm not going to talk to her.
15 I'm not going to talk to a woman that I don't
16 like.

17 Q What if you like her and she
18 doesn't like you?

19 MR. McNAMARA: Objection.

20 A And then I don't like her.

21 Q So you never lied to a woman
22 ever?

23 A No.

24 Q Did you ever lie to your mother?

25 A I don't usually lie.

1 O. W. Pagoda

2 Q Usually? Which means that
3 sometimes you do have to lie; correct?

4 MR. McNAMARA: Objection.

5 A I don't tend to lie.

6 Q You don't tend to lie, but
7 sometimes you do lie; correct?

8 A It's just that I don't lie to
9 anyone.

10 Q Sometimes you tell little white
11 lies; correct?

12 MR. McNAMARA: Objection.

13 A Small nor big.

14 Q So you never lie?

15 MR. McNAMARA: Objection.

16 A [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A [REDACTED] [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 Q [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 A [REDACTED]

11 [REDACTED]

12 Q [REDACTED]

13 A [REDACTED]

14 Q Did you eat breakfast this

15 morning?

16 A No.

17 Q Do you usually eat breakfast?

18 A No, I didn't eat breakfast.

19 Q Do you usually eat breakfast?

20 A No, hardly. Only lunch.

21 Q You always eat lunch?

22 A Yes.

23 Q What do you eat for lunch?

24 A You want me to give you details?

25 Q Yes.

1 O. W. Pagoda

2 A What everyone eats.

3 Q I don't know what everyone eats.

4 A How can I tell you what I eat
5 daily?

6 Q Just tell me, generally, what
7 you like to eat for lunch.

8 A Whatever; meat, rice.

9 Q Chicken?

10 A Everything.

11 Q Chicken cutlet?

12 A Yes, everything.

13 Q On a hero?

14 A No, no. I eat a little.

15 Q [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 MR. McNAMARA: Objection.

19 A [REDACTED]

20 [REDACTED]

21 Q So the answer to my question is
22 yes; correct?

23 A [REDACTED]

24 [REDACTED]

25 Q [REDACTED]

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A [REDACTED]

4 [REDACTED]

5 Q When you worked for Payco in
6 2006, how much did you earn an hour?

7 A Eighteen.

8 Q Eighteen what?

9 A Eighteen dollars.

10 Q Per hour?

11 A Yes.

12 Q How many hours a week did you
13 work?

14 A Forty, forty-five, and sometimes
15 more. It depended on the work. Sometimes
16 less, as well.

17 Q And you worked there for the
18 entire year of 2006; correct?

19 A Yes.

20 Q Did you work any other jobs
21 in 2006?

22 A No, not that I recall.

23 Q Did you work in 2007?

24 A Yes.

25 Q Where did you work in 2007?

1 O. W. Pagoda

2 A In Payco.

3 Q You worked there the full year?

4 A Yes.

5 Q How much did you earn per hour
6 there?

7 A Eighteen, the same, always.

8 Q Did you work in 2008?

9 A Yes.

10 Q Where did you work in 2008?

11 A In 2008, I think I worked -- I
12 didn't work the whole year in Payco. Towards
13 the end of the season, I started working in
14 Suffolk Paving.

15 Q What is the season?

16 A I don't really remember. The
17 season in 2008? Towards end of season, I
18 started working at Suffolk Paving.

19 Q What is the paving season?

20 A I don't remember.

21 Q Don't you generally work between
22 April and November of every year?

23 MR. McNAMARA: Objection.

24 A I don't understand.

25 Q The paving season, isn't it

1 O. W. Pagoda

2 between April and November?

3 MR. McNAMARA: Objection.

4 A No, in Suffolk, I started
5 working in about September. I really don't
6 remember. I really don't remember.
7 September, October, I don't remember the
8 exact date.

9 Q In 2009, where did you work?

10 A Suffolk Paving.

11 Q Did you work there for the whole
12 year?

13 A Yes.

14 Q But didn't you really only work
15 during the paving season?

16 A Yes, in Suffolk.

17 Q So you started work there in
18 April of 2009?

19 MR. McNAMARA: Objection.

20 A In Suffolk?

21 Q Yes.

22 A Yes, in Suffolk, I worked the
23 whole season.

24 Q What was the whole season; from
25 what month to what month?

1 O. W. Pagoda

2 A March, April -- we would always
3 start the 15th of March, the 1st of April.
4 That was the date when the season started.
5 It's after the cold, when it's not as cold.

6 Q And you would work until when?

7 A The whole season. I worked the
8 whole season.

9 Q What was the season?

10 A In the year 2009?

11 Q Yes. Stop playing games, and
12 just answer the question.

13 A I'm not playing.

14 Q You clearly are. Even your
15 attorney thinks so.

16 A No, I'm not playing. I'm
17 telling you the truth.

18 Q Listen. When did the season end
19 in 2009?

20 A It always ends in November.

21 Q Thank you. Was that so
22 difficult?

23 A No, because I thought you were
24 asking me when it began, not when it ended.

25 Q You told me it began March 15th

1 O. W. Pagoda

2 to April 1st.

3 A Yes, always between those dates.

4 The season starts between March 15th and

5 April 1st because at that time, it's no

6 longer cold.

7 Q And it ends in November of every
8 year; right?

9 A November, November. The end of
10 November.

11 Q In 2010, where did you work?

12 A In 2010, I worked in a company
13 that's called East Port Excavation.

14 Q When did you start working for
15 East Port Excavation in 2010?

16 A When did I start?

17 Q Isn't that what I just asked
18 you?

19 A I don't remember exactly when I
20 started.

21 Q Roughly, when did you start?

22 A I don't recall. I don't
23 remember exactly.

24 Q You have no idea when you worked
25 at East Port Excavation?

1 O. W. Pagoda

2 A No. I think in about the middle
3 of the season.

4 Q What season?

5 A Of 2010.

6 Q What month did you work there?

7 A I don't remember exactly. I
8 don't remember.

9 Q What was your last day of work
10 at Suffolk Paving?

11 MR. McNAMARA: Objection.

12 A I don't remember.

13 Q How did your employment come to
14 an end at Suffolk Paving?

15 A At the end of November, I
16 finished.

17 Q Why?

18 A Because it's already cold.
19 Normally, all companies stop at that time. I
20 don't remember exactly what the last day was.
21 The season ended, and they didn't call me
22 anymore because of the lawsuit. They didn't
23 give me any more work.

24 Q Did you call them?

25 A No, never. Because they used to

1 O. W. Pagoda

2 call us when the season started.

3 Q Would they call you directly, or
4 would they call someone else?

5 A No, sometimes they would call
6 me, or if not, the foreman.

7 Q What is your telephone number
8 that they would call you on?

9 A They would call me -- the person
10 in charge of the group, my foreman, would
11 call me.

12 Q Who was that?

13 A Renato.

14 Q Renato Guerra?

15 A Yes, Renato.

16 Q What is Renato Guerra's
17 telephone number?

18 A I don't know it.

19 Q So they never called you
20 directly; they would call Renato Guerra;
21 correct?

22 A Yes.

23 Q Then, Renato Guerra would tell
24 you to come to work; correct?

25 A Yes, he would call us, and

1 O. W. Pagoda

2 sometimes Tommy would call, the guy from the
3 office.

4 Q Tommy would call Renato Guerra?

5 A Yes. Or if not, he would call
6 me; Sometimes, not always.

7 Q He would call you on what
8 telephone number; your telephone number?

9 A He would call me to my
10 telephone.

11 Q What number? What number?

12 MR. McNAMARA: Objection.

13 Counsel, please lower your voice.

14 A Please don't speak to me so
15 loud, please.

16 Q Answer the question, and you'll
17 be spoken to in the manner which is befitting
18 you.

19 A Yes, but don't yell at me. I'll
20 answer you, but don't yell at me.

21 Q I'll yell at you if you're not
22 answering the questions. Answer the
23 question.

24 What telephone number did he
25 call you at?

1 O. W. Pagoda

2 A Mine; [REDACTED]

3 Q For how long have you had that
4 cellphone number?

5 A It's been two years, but two
6 years ago, it was a different number, but
7 since then, I've had this number.

8 Q What was the other number that
9 you had?

10 A It was [REDACTED] -- I
11 don't remember, 05 -- I don't remember the
12 last numbers. I don't remember the last two
13 numbers because it's already been two years
14 since I had that phone.

15 Q Why did you lose that phone
16 number?

17 MR. McNAMARA: Objection.

18 A Because I changed it. During
19 the time that I worked at Suffolk, it's been
20 this number.

21 Q How much did you earn per hour
22 when you started working for Suffolk Paving?

23 A Twenty-something. I don't
24 remember.

25 Q You don't know how much you made

1 O. W. Pagoda

2 an hour?

3 A Twenty and some change. I don't
4 remember.

5 Q What was your job title at
6 Suffolk Paving?

7 A Laborer.

8 Q Did you work in the shop, or did
9 you work in the field?

10 A No, in the paving group, in the
11 asphalt group.

12 Q Did you ever do any work in the
13 shop?

14 A No.

15 Q You only did work out in the
16 field?

17 A Yes.

18 Q You say that you started for
19 Suffolk Paving in 2008; correct?

20 A 2008.

21 Q In October of 2008; correct?

22 A Yes, in October, more or less.
23 I don't remember the exact day, but...

24 Q How much did you start earning
25 in October of 2008?

1 O. W. Pagoda

2 A About twenty-and-some cents.

3 Q And in 2009, did you get a
4 salary increase?

5 A No.

6 Q So you made the same at the end
7 of 2008 that you did in 2009?

8 A Yes, the same.

9 Q Now, at the end of the paving
10 season, you don't work full weeks; correct?

11 A No.

12 Q Because it was starting to get
13 cold, and the work was slowing down; correct?

14 A Yes.

15 Q And the end of the season starts
16 in October of the year; correct?

17 A Yes.

18 Q That's every year; correct?

19 A Yes, every year.

20 Q And at the beginning of the
21 year, things start off slow; correct?

22 A Yes, because it's still cold.

23 Q Right. So you don't work every
24 day of the week then, as well; correct?

25 A No.

1 O. W. Pagoda

2 Q No, I'm correct, or no, you
3 don't work every day?

4 A No, no, because it's still cold.
5 It's still cold. The cold still hasn't gone
6 away, so you don't work every day. We start
7 slowly.

8 Q When you worked for Suffolk
9 Paving, were you paid in cash or check?

10 A By check.

11 Q You received a check every week
12 that you worked there; correct?

13 A Yes.

14 Q Did you ever receive cash?

15 A No, no. One time they owed me a
16 day, because when we did work for the State
17 at prevailing wage, they didn't pay me one
18 day, so Louie, that day, paid me in cash. He
19 gave me \$200, because they hadn't paid me one
20 prevailing wage day. He gave me \$200 in cash
21 just one day, only one day, but then never
22 again.

23 Q So you told Louie that he didn't
24 pay you for a day, and he paid you in cash
25 right there and then; is that correct?

1 O. W. Pagoda

2 A Yes.

3 Q But every week you received a
4 check; correct?

5 MR. McNAMARA: Objection.

6 A Yes.

7 Q On that check it listed the
8 hours that you worked that week; correct?

9 A Yes, but they didn't pay me the
10 hours that I worked.

11 Q But the checks listed every hour
12 that you worked; correct?

13 MR. McNAMARA: Objection.

14 A Yes, it had the total number of
15 hours that they would pay us.

16 Q That was every week; correct?

17 MR. McNAMARA: Objection.

18 A Yes.

19 Q Did you ever receive any
20 overtime when you worked at Suffolk Paving?

21 A Never.

22 Q Never?

23 A Not even one hour, never. No.

24 Q Did you drive to the worksites
25 when you worked at Suffolk Paving?

1 O. W. Pagoda

2 A No, only to the yard.

3 Q Could you drive to the
4 worksites?

5 A Yes, but they would tell you to
6 go to the yard.

7 Q So you could drive directly to
8 the worksite; correct?

9 A Yes.

10 Q You had the physical ability to
11 do that; right?

12 A It's --

13 Q Just answer the question.

14 MR. McNAMARA: Objection,
15 Counsel.

16 Q Just answer the question.

17 Do you understand that?

18 MR. McNAMARA: Counselor, he's
19 trying to answer it.

20 Q Just answer it.

21 A I'm answering you.

22 Q You had the physical ability to
23 drive to the worksite; correct?

24 MR. McNAMARA: Objection.

25 A Yes.

1 O. W. Pagoda

2 Q Did you have a car in 2009?

3 A Yes.

4 Q Did you have a car in 2010?

5 A Yes.

6 Q Whose car was it in 2009?

7 A Mine.

8 Q What kind of car was it?

9 A A Subaru. It's the same one
10 that I have.

11 Q Who owns that car?

12 A It's my friend Nelson's.

13 Q Nelson Quintanilla?

14 A Yes.

15 Q Is it registered and insured?

16 A Yes.

17 Q To who?

18 A Nelson. He's the owner of car.

19 Q Did Nelson drive you to the shop
20 every day?

21 A No. Because sometimes they
22 would send us in different --

23 Q Just say no.

24 Listen, listen. When I ask you
25 the question: Did Nelson drive you to the

1 O. W. Pagoda

2 shop every day? The answer is: Yes or no.

3 A No, because not always.

4 Q The answer is yes or no.

5 Do you understand that?

6 MR. McNAMARA: Objection.

7 A No.

8 Q Why are you having such a hard

9 time understanding these questions?

10 MR. McNAMARA: Objection.

11 A No. Because you're asking me in

12 different ways.

13 Q Did you ever go to school?

14 A Not here.

15 Q In your native country, did you

16 go to school?

17 A Yes.

18 Q Until you were how old?

19 A Until sixth grade.

20 Q I'm going to slow down my

21 questions for you. Stop fighting me on them.

22 Just answers the questions I ask you.

23 MR. McNAMARA: Objection.

24 A I'm not fighting with you.

25 Q You clearly are.

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A No.

4 Q Yes.

5 A No.

6 Q Yes.

7 MR. McNAMARA: Objection.

8 A No.

9 Q Yes.

10 MR. McNAMARA: Objection.

11 A I'm not fighting with you.

12 Q When I ask you a yes-or-no

13 question, you answer yes or no, and nothing
14 else.

15 Can you understand that?

16 MR. McNAMARA: Objection.

17 A If that's what you believe.

18 Q Can you understand that?

19 MR. McNAMARA: Objection.

20 A Yes.

21 Q Can you follow that instruction?

22 MR. McNAMARA: Objection.

23 A Which one?

24 Q To answer my questions yes or

25 no.

1 O. W. Pagoda

2 A Yes.

3 Q Do you have the ability to
4 answer those questions yes or no?

5 A Yes.

6 Q Thank you.

7 Is it your testimony that you
8 went to the shop every morning?

9 A Yes. To the yard.

10 Q Yes or no?

11 A Yes.

12 Q Did you physically drive to the
13 yard every morning?

14 A Yes.

15 Q Did you drive anybody?

16 A No, only me.

17 Q You drove by yourself every
18 morning?

19 A Alone, alone.

20 Q And you were in the yard for
21 about five minutes before going off to your
22 next assignment; correct?

23 MR. McNAMARA: Objection.

24 A When we would get to the yard,
25 we would --

1 O. W. Pagoada

2 Q Yes or no?

3 A What do you mean?

4 Q You were in the yard for about
5 five minutes every day before you left for
6 your assignment; correct?

7 MR. McNAMARA: Objection.

8 A More.

9 Q How much more?

10 A Sometimes up to twenty minutes,
11 because once we got there, we had to put the
12 tools in. We had to put in the work tools.

13 Q You put the work tools in what?

14 A In the box truck. We had to put
15 the machinery in, put propane in, risers,
16 everything that we needed at work.

17 Q Do you know that everybody
18 testified that all those things stay in the
19 box truck?

20 MR. McNAMARA: Objection.

21 Q Correct?

22 MR. McNAMARA: Objection.

23 A Yes, we have to --

24 Q You don't take them out every
25 day; correct?

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A Yes, but you need them daily.

4 Q Right. And they're in the truck
5 daily; correct?

6 MR. McNAMARA: Objection.

7 A Yes.

8 Q You're saying that you would go
9 to the shop every morning to load up trucks
10 that were already loaded; correct?

11 MR. McNAMARA: Objection.

12 Q Correct?

13 A (No verbal response.)

14 Q Correct; yes or no?

15 MR. McNAMARA: Objection.

16 A To change propanes.

17 Q Wouldn't the driver of the truck
18 do that?

19 A Everyone, because we would
20 always change machinery.

21 Q Who told you that you have to
22 come to the shop every morning?

23 A The boss.

24 Q Who?

25 A Louie.

1 O. W. Pagoda

2 Q Do you speak English?

3 A No.

4 Q Does Louie speak Spanish?

5 A No -- some words.

6 Q What words does he speak?

7 A Very little. He would always
8 say tomorrow, such and such an hour, things
9 like that.

10 Q Nelson Quintanilla testified
11 that sometimes he would drive directly to a
12 worksite in the morning.

13 MR. McNAMARA: Objection.

14 A Yes. But after the lawsuit.

15 Q Well, he said before the lawsuit
16 too.

17 MR. McNAMARA: Objection.

18 A I don't know because we were in
19 different groups. We weren't always
20 together. Different groups.

21 Q After you go to the workshop in
22 the morning, you would go in the box truck?

23 A To the job site, yes.

24 Q Who drove that box truck?

25 A Nelson would drive it,

1 O. W. Pagoda

2 Lerly Rodriguez, and sometimes Walter.

3 Q Garcia?

4 A Yes.

5 Q Nice fellow; right?

6 A Yes, he's a good person.

7 Q He loves his egg sandwiches in
8 the morning; right?

9 A I don't know.

10 Q With mayonnaise?

11 A I don't know.

12 Q After you left the shop in the
13 morning, would you go get breakfast?

14 A Sometimes we would stop,
15 sometimes.

16 Q Really? Because they testified
17 that it was every day.

18 MR. McNAMARA: Objection.

19 A No. I don't know. Sometimes
20 you're in a different group, but sometimes,
21 sometimes, yes.

22 Q Where would they stop for
23 breakfast?

24 A At the deli.

25 Q What would they get?

1 O. W. Pagoda

2 A Food; a sandwich, whatever.

3 Something to eat, something to have for
4 breakfast.

5 Q How long would that take?

6 A About five minutes.

7 Q Really? Because they said it
8 would take ten minutes to order, another ten
9 or fifteen minutes to eat.

10 MR. McNAMARA: Objection.

11 A Because when we would buy the
12 food there, we would eat the food on the
13 way -- in the box truck on the way to the job
14 site.

15 Q Even the guy who was driving?

16 A No. One would eat, and
17 sometimes they would switch so that the
18 driver could eat.

19 Q Do you drink coffee in the
20 morning?

21 A Yes, at home.

22 Q Never at work?

23 A No.

24 Q What about your coworkers, would
25 they drink coffee at work?

1 O. W. Pagoda

2 A No, not while working, not while
3 working.

4 Q What about while driving in the
5 morning?

6 A Sometimes, sometimes. Very few
7 times.

8 Q What time would you get to the
9 shop in the morning?

10 A At 6:00.

11 Q Every morning?

12 A Always.

13 Q Who was there at 6:00 in the
14 morning when you were there?

15 A Tommy, sometimes Louie was
16 there, sometimes.

17 Q Anybody else?

18 A Chris.

19 Q Anybody else?

20 A No, not that I recall. It was
21 always almost Tommy, Chris, and Lou. That's
22 it.

23 Q At 6:00 in the morning, the only
24 people at the shop were you, Tommy, Louie,
25 and Chris; correct?

1 O. W. Pagoda

2 A Yes.

3 Q Nobody else?

4 A No.

5 Q Do you know who the owner of
6 Suffolk Paving is?

7 A Yes.

8 Q Who is the owner?

9 A Louie Vecchia and Chris Beck --
10 Beken (phonetic) -- I don't know how to say
11 it.

12 Q How do you know Louie is the
13 owner of Suffolk Paving?

14 MR. McNAMARA: Objection.

15 A I always knew that he was the
16 owner of the company.

17 Q How did you know?

18 MR. McNAMARA: Objection.

19 A Because everyone knows that he
20 has been the owner.

21 Q How do you know that
22 Chris Vecchia is an owner of Suffolk Paving?

23 A Because the union company, he
24 put in his son's name, Asphalt Paving. I
25 don't really know the name well, and that's

1 O. W. Pagoda

2 because I didn't work there in the union one.

3 Q So you didn't work for Suffolk
4 Asphalt at all?

5 A No, Suffolk Paving.

6 Q You only worked for
7 Suffolk Paving; correct?

8 MR. McNAMARA: Objection.

9 A Yes.

10 Q So there's no reason for you to
11 be suing Suffolk Asphalt; correct?

12 MR. McNAMARA: Objection.

13 A I worked for Suffolk Paving.

14 Q You never worked for
15 Suffolk Asphalt?

16 A Sometimes they would send me.
17 Sometimes, because since they were different
18 groups.

19 Q But you always got paid by
20 Suffolk Paving; correct?

21 MR. McNAMARA: Objection.

22 A Suffolk Paving.

23 Q And the only owner that you know
24 of Suffolk Paving is Lou Vecchia; correct?

25 A Yes.

1 O. W. Pagoda

2 Q Nobody else owns Suffolk Paving,
3 other than Lou Vecchia; correct?

4 MR. McNAMARA: Objection.

5 A No.

6 Q You told that to your attorneys;
7 correct?

8 MR. McNAMARA: Objection.

9 A No, I haven't spoken to them
10 about that.

11 Q Don't you think you should have?

12 MR. McNAMARA: You don't have to
13 answer that.

14 Counsel, that's attorney/client
15 communication.

16 MR. ZABELL: Yes, he does.

17 MR. McNAMARA: He does not.

18 Counselor, that's privileged.

19 Mr. ZABELL: No. Asking him
20 whether or not he thinks he should have
21 spoken to his attorneys about that is
22 not privileged. It doesn't cover an
23 attorney/client communication.

24 MR. McNAMARA: Okay.

25 Q Don't you think you should have

1 O. W. Pagoda

2 spoken to your attorneys about that?

3 A The lawsuit is for
4 Suffolk Paving. Suffolk Paving and the other
5 union company, because the rest of the
6 workers worked for both, the union too.

7 Q So you're different than the
8 rest of the workers, is that what your
9 testimony is?

10 MR. McNAMARA: Objection.

11 A Yes, because the rest of them
12 were a union group.

13 Q You were never in the union;
14 right?

15 A No.

16 Q [REDACTED]
17 [REDACTED]

18 MR. McNAMARA: Objection.

19 A [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Q [REDACTED]

23 A [REDACTED] [REDACTED]
24 [REDACTED]

25 Q [REDACTED]

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A [REDACTED]

4 Q [REDACTED] ow?

5 MR. McNAMARA: Objection.

6 A [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q What was the first company you
10 worked for after working at Suffolk Paving?

11 MR. McNAMARA: Objection.

12 A With Ralph Lunati.

13 Q When did you work for
14 Ralph Lunati?

15 A 2010.

16 Q When in 2010 did you start
17 working with Ralph Lunati?

18 A I don't recall. I don't
19 remember which month.

20 Q The beginning of the year or the
21 end of the year?

22 A I think it was in about the
23 beginning of the year, at the start of the
24 season.

25 Q Why did you stop working with

1 O. W. Pagoda

2 Ralph Lunati?

3 A There was not a lot of work.

4 Q Did Ralph Lunati pay you in cash
5 or check?

6 A Check. He paid me in check.

7 Q Are you claiming that
8 Suffolk Paving terminated you in retaliation
9 for complaints that you made?

10 MR. McNAMARA: Objection.

11 A No. After we filed the lawsuit,
12 they didn't call me again.

13 Q Do you think they didn't call
14 you again because of the lawsuit?

15 MR. McNAMARA: Objection.

16 A No, no, they didn't call me
17 again.

18 Q Is that what you're claiming,
19 that you no longer work at Suffolk Paving
20 because you filed this lawsuit?

21 MR. McNAMARA: Objection.

22 A Yes. Since we filed a lawsuit,
23 they realized -- they didn't call me again to
24 work.

25 Q And are you claiming damages

1 O. W. Pagoda

2 because they never called you back to work?

3 MR. McNAMARA: Objection.

4 A No. Only for them to pay me the
5 hours that they didn't pay me while I was
6 working.

7 Q And you want to be compensated
8 for travel time; is that correct?

9 MR. McNAMARA: Objection.

10 A I want them to pay me the hours
11 that I worked, the hours that they owe me.

12 Q Are you talking about the time
13 that you were actually physically working on
14 the worksite?

15 MR. McNAMARA: Objection.

16 A Yes.

17 Q Not the time that you spent
18 driving to the worksite and back from the
19 worksite; correct?

20 MR. McNAMARA: Objection.

21 A No, no.

22 Q In 2009, do you remember any of
23 the projects that you worked on at
24 Suffolk Paving?

25 A No.

1 O. W. Pagoda

2 Q You don't remember any of them?

3 MR. McNAMARA: Objection.

4 A No.

5 Q Do you remember any of the start
6 times for any of those projects?

7 MR. McNAMARA: Objection.

8 A We always started at 6:00 a.m.

9 Q But not on the job site; right?

10 MR. McNAMARA: Objection.

11 A At 7:00 a.m., we were already at
12 the job site.

13 Q Every job site?

14 A Yes.

15 Q You never started a job site at
16 8:00?

17 A No. Maybe a few times.

18 Q What about at 7:00 in the
19 morning in October, isn't it dark then?

20 MR. McNAMARA: Objection.

21 A No, but at that time, we were
22 always at work.

23 Q Even in October?

24 MR. McNAMARA: Objection.

25 A I really don't remember.

1 O. W. Pagoda

2 Q So you could be wrong a little
3 bit; right?

4 MR. McNAMARA: Objection.

5 A Because -- I don't remember
6 exactly.

7 Q So you could be wrong, correct;
8 yes or no?

9 A No, because...

10 Q If you don't remember, you could
11 be wrong.

12 MR. McNAMARA: Objection.

13 A Because we were always there at
14 that time. We were always there at that
15 time. One way or another, our duty was to
16 get to the yard at 6:00 in the morning, put
17 propane in the truck, and leave. We were
18 always at the place where we were going to
19 work at 7:00 a.m.

20 Q Always?

21 A Always.

22 Q Whether it was dark or light
23 out?

24 A It didn't matter. We would
25 leave at 9:00 p.m.

1 O. W. Pagoda

2 Q You left at 9:00 p.m. every day?

3 A Not every day, but we would
4 always get out late; 6:00, 7:00, 8:00.

5 Q I thought you just said 9:00.

6 MR. McNAMARA: Objection.

7 Q Were you lying?

8 MR. McNAMARA: Objection.

9 A From 6:00 p.m., 7:00, 8:00,
10 9:00, between those hours. That was the
11 hours that we would get out all the time.

12 Q So you left between 6:00 and
13 9:00 every night?

14 MR. McNAMARA: Objection.

15 A Yes, between 6:00 -- we would
16 always get out at those hours. That was the
17 time that we got out of work.

18 Q You know that I don't believe
19 you; right?

20 MR. McNAMARA: Objection.

21 A That was the time that we always
22 got out.

23 Q That's not what your coworkers
24 testified to.

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A I don't know. In the groups
3 that I was in, we would always get out at
4 that time. That's why I'm saying between
5 6:00 p.m., 7:00 p.m.

6 Q Look at your lawyer.

7 A Those are the hours that we
8 would get out.

9 Q Look at your lawyer. He doesn't
10 believe you, either.

11 MR. McNAMARA: That's not true.

12 A Those were the hours that we
13 always got out. Not every day.

14 Q Oh, okay. Not every day?

15 A Not every day, but that's why
16 I'm saying that always between 6:00 p.m. and
17 sometimes 7:00, but we worked twelve hours
18 daily, every day, daily. They would pay me
19 for eight. Those were the hours daily.

20 Q If it was so bad, why didn't you
21 leave?

22 MR. McNAMARA: Objection.

23 A We needed to work. One needs to
24 work.

25 Q But you could have gone to

1 O. W. Pagoda

2 Payco, East Port Excavating, Ralph Lunati.

3 MR. McNAMARA: Objection.

4 Q You could have gone to any of
5 those places.

6 MR. McNAMARA: Objection.

7 A No. Because Payco, at that
8 time, already closed. They closed the
9 company.

10 Q What about Ralph Lunati?

11 A Well, afterwards, I went to
12 Ralph Lunati. It's hard to get work. It's
13 difficult to find work.

14 Q Why is it hard to get work?

15 A There is no work. You have to
16 keep looking and looking. There's very
17 little work. The companies already have
18 their own persons, their own workers. They
19 don't even have work for the ones that they
20 have. That's why it's difficult to get work.

21 Q So work is slowing down all
22 over?

23 A Everywhere.

24 Q Even at Suffolk Paving?

25 A I don't know about now. I don't

1 O. W. Pagoda

2 know about now.

3 Q Did you ever borrow money from
4 Suffolk Paving?

5 MR. McNAMARA: Objection.

6 A No.

7 Q Do you know if anybody did?

8 A No, I don't know.

9 Q Do you know Renato Guerra?

10 A Yes, I know him.

11 Q You know he also goes by another
12 name; right?

13 MR. McNAMARA: Objection.

14 A Maynor.

15 Q Maynor Fajardo.

16 A That's his name, but everyone
17 knows him by Renato.

18 Q So he goes by an alias; correct?

19 MR. McNAMARA: Objection.

20 A I don't know what is an alias.

21 I really don't know. When I met him, I met
22 him as Renato, but I do know that his name is
23 Maynor.

24 Q He was the one that would tell
25 you all of your work assignments in the

1 O. W. Pagoda

2 morning; correct?

3 A Yes.

4 Q And you could have driven to the
5 worksite in the morning?

6 A Yes.

7 Q And you could have driven to the
8 actual work assignment; right?

9 A Yes, but --

10 Q What is Renato Guerra's
11 telephone number?

12 MR. McNAMARA: Objection.

13 A I don't know if it's the same.

14 Q The same as what?

15 MR. McNAMARA: Objection.

16 A I don't know if it's the same
17 one. I haven't spoken with him since I left
18 the company. I don't know if it's the same
19 one. I don't speak with him.

20 Q Have you ever collected
21 unemployment benefits?

22 MR. McNAMARA: Objection.

23 A No.

24 Q Have you ever collected any
25 Social Services benefits?

1 O. W. Pagoda

2 A I don't understand the question.

3 Q Have you ever received welfare?

4 MR. McNAMARA: Objection.

5 A No, only when I do my income
6 taxes, and I don't get...

7 Q You don't get what?

8 A Money. I don't receive money.

9 Q Did you ever get food stamps?

10 MR. McNAMARA: Objection.

11 A Excuse me?

12 Q Food stamps, did you ever
13 receive food stamps?

14 A No, no.

15 You need Renato's number? I
16 don't know if it's the same one.

17 Q Sure, give it to me.

18 A I don't know if it's still the
19 same.

20 Q Go ahead, give it to me.

21 A 

22 Q That was the number you would
23 call him on?

24 A Yes.

25 Q To find out where the work

1 O. W. Pagoda

2 assignments were?

3 MR. McNAMARA: Objection.

4 Q Right?

5 A No, because he would always call
6 me to go to the yard.

7 Q Yes or no?

8 MR. McNAMARA: Objection.

9 Q Yes or no?

10 A No. That's the number.

11 Q That's the number you would call
12 him on to get work assignments; correct?

13 MR. McNAMARA: Objection.

14 A Yes.

15 Q After leaving Suffolk Paving
16 in 2009, you started working for Ralph Lunati
17 in 2010; correct?

18 A Yes.

19 Q And you've been working in 2010
20 for either Ralph Lunati or East Port
21 Excavation; correct?

22 A Yes.

23 Q Are you working at East Port
24 Excavation now?

25 A No.

1 O. W. Pagoda

2 Q You worked at East Port
3 Excavation until when?

4 A I don't remember exactly until
5 what month.

6 Q Where have you worked in 2011?

7 A I was working very little
8 because I don't -- because I didn't have a
9 stable job. Sometimes I go with my friends
10 to help them and work for them. I don't have
11 a stable job. I work just days.

12 Q Do you get paid cash for those
13 days?

14 MR. McNAMARA: Objection.

15 A When I go and help a friend, but
16 not always, hardly ever.

17 Q Do you report that cash on your
18 income tax returns?

19 MR. McNAMARA: Objection.

20 A It's been a few times only.
21 Just up until now, up to now.

22 Q When you worked for
23 Suffolk Paving, did you ever do any side
24 jobs?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A No.

3 Q Never?

4 A No.

5 Q You never did any side work on
6 the weekends?

7 A No, no, I didn't work.

8 Q You didn't work on the weekends?

9 A No, no. From Monday through
10 Friday.

11 MR. ZABELL: I'm going to take a
12 short break.

13 Remind him again that he has to
14 continue telling the truth.

15 MR. McNAMARA: He's already
16 aware, Counselor.

17 MR. ZABELL: I'm not so sure.
18 He's all over the place.

19 (Whereupon, a brief recess was
20 taken at this time.)

21 Q We just took a break; right?

22 A How long?

23 Q We just took a break; right?

24 A Okay.

25 Q Okay, or yes we did?

1 O. W. Pagoda

2 A Yes.

3 Q Did you have an occasion to
4 speak with your attorney during that break?

5 A No.

6 Q Really? I saw you talking in
7 here.

8 MR. McNAMARA: We didn't talk.

9 Q You didn't say one word to him?

10 A Now? No. During the break, I
11 didn't speak with him.

12 Q Who did you speak with?

13 A With no one.

14 Q He reminded you to tell the
15 truth; correct?

16 A Yes.

17 Q I don't know why that's so
18 difficult for you to admit.

19 MR. McNAMARA: Objection.

20 Q What names do you go by?

21 A Osmar.

22 Q Anything else?

23 A Osmar or -- most of the time,
24 Osmar.

25 Q Do you go by the name

1 O. W. Pagoada

2 Osmar Wilfredo?

3 A Yes, sometimes Will.

4 Q Do you tell everybody that your
5 last name is Pagoada?

6 A Yes.

7 Q Did you tell that to the people
8 at Suffolk Asphalt?

9 A Yes.

10 Q Did you tell them it was your
11 legal name?

12 A Yes.

13 Q Is it your legal name?

14 A Yes.

15 Q Have you ever been known by any
16 other name, other than Osmar Wilfredo
17 Pagoada?

18 MR. McNAMARA: Objection.

19 A No, that's my name.

20 Q Have you ever been arrested?

21 A No.

22 Q Either here in the United States
23 or in Honduras?

24 MR. McNAMARA: Objection.

25 A Not here nor in my country.

1 O. W. Pagoda

2 Q Have you ever done anything that
3 warrants you getting arrested?

4 MR. McNAMARA: Objection.

5 A No.

6 Q Do you remember when I told you
7 to be honest with me?

8 A Yes.

9 Q [REDACTED]
10 [REDACTED]

11 MR. McNAMARA: Objection.

12 A [REDACTED] --

13 Q [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 MR. McNAMARA: Objection.

17 A [REDACTED].

18 Q Do you remember telling me that
19 you didn't file some of the income that you
20 earned on your income tax returns?

21 MR. McNAMARA: Objection.

22 A Yes.

23 Q You know, all of those things
24 are violations of the law. You know that,
25 correct?

1 O. W. Pagoda

2 A (No verbal response.)

3 Q Correct?

4 A Yes.

5 Q [REDACTED]

6 [REDACTED]

7 A [REDACTED]

8 Q Was that ever explained to you?

9 MR. McNAMARA: Objection.

10 A I'm not doing anything more
11 serious to be arrested. I haven't done
12 anything more serious.

13 Q Oh, you haven't done anything
14 more serious than that?

15 MR. McNAMARA: Objection.

16 A No.

17 Q Did you tell your attorneys
18 those things that you did?

19 MR. McNAMARA: Objection.

20 That's privileged. He doesn't have to
21 answer.

22 Q Did you tell anybody that you
23 violated those laws?

24 A No.

25 Q You just kept it to yourself?

1 O. W. Pagoda

2 A I haven't spoken those things
3 with him.

4 Q Your comfortable with those
5 three things; correct?

6 MR. McNAMARA: Objection.

7 A Yes.

8 Q You did it because you feel you
9 needed to do it; right?

10 MR. McNAMARA: Objection.

11 A Yes.

12 Q And you're going to continue to
13 do it; correct?

14 MR. McNAMARA: Objection.

15 A What?

16 Q Break the law.

17 MR. McNAMARA: Objection.

18 A

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q It's just a matter of where?

23 MR. McNAMARA: Objection.

24 Q Correct?

25 MR. McNAMARA: Objection.

1 O. W. Pagoza

2 A I don't know. I don't
3 understand.

4 Q Of course you don't.

5 MR. McNAMARA: Objection.

6 Q [REDACTED]

7 [REDACTED]

8 MR. McNAMARA: Objection.

9 A [REDACTED]

10 Q [REDACTED]

11 [REDACTED]

12 MR. McNAMARA: Objection.

13 A [REDACTED]

14 Q [REDACTED]

15 [REDACTED]

16 MR. McNAMARA: Objection.

17 A [REDACTED]

18 Q [REDACTED]

19 [REDACTED]

20 A .

21 Q [REDACTED]

22 [REDACTED]

23 MR. McNAMARA: Objection.

24 A [REDACTED]

25 Q Just answer my questions.

1 O. W. Pagoda

2

3

4

MR. McNAMARA: Objection.

5

A

6

Q

7

MR. McNAMARA: Objection.

8

A

(No verbal response.)

9

Q

10

A

11

Q

12

13

MR. McNAMARA: Objection.

14

A

15

16

17

Q

18

19

20

A

21

22

Q

Listen to me. Just answer my

23

questions; okay?

24

MR. McNAMARA: Objection.

25

A

I'm answering them.

1 O. W. Pagoda

2 Q [REDACTED]

3 [REDACTED]

4 MR. McNAMARA: Objection.

5 A [REDACTED] --

6 Q [REDACTED]

7 A [REDACTED]

8 [REDACTED]

9 Q [REDACTED]

10 [REDACTED]

11 MR. McNAMARA: Objection.

12 A [REDACTED]

13 Q [REDACTED]

14 MR. McNAMARA: Objection.

15 A (No verbal response.)

16 Q [REDACTED]

17 [REDACTED]

18 MR. McNAMARA: Objection.

19 A [REDACTED] [REDACTED]

20 Q [REDACTED]

21 [REDACTED]

22 MR. McNAMARA: Objection.

23 A [REDACTED].

24 Q [REDACTED]

25 [REDACTED]

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A [REDACTED]

4 [REDACTED]

5 Q [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 MR. McNAMARA: Objection.

9 A (No verbal response.)

10 Q [REDACTED]

11 A [REDACTED].

12 Q Was that so difficult to tell

13 me?

14 MR. McNAMARA: Objection.

15 A [REDACTED]

16 [REDACTED]

17 Q Listen. I know --

18 A There's no other way.

19 Q -- I know the answer to most of

20 the questions I ask you.

21 Do you understand that?

22 A Yes.

23 Q And I know you know the answers.

24 MR. McNAMARA: Objection.

25 Q I'm not interested in your

1 O. W. Pagoda

2 excuses. I'm only interested in the answers
3 to the questions I ask.

4 Do you understand that?

5 A Yes, I understand, but you don't
6 have to speak to me in that way.

7 Q When you say "but," you are
8 offering an excuse. I'm not interested in
9 your excuses.

10 Do you understand that?

11 MR. McNAMARA: Objection.

12 Q Do you?

13 A Yes, I understand.

14 Q [REDACTED]

15 [REDACTED]

16 MR. McNAMARA: Objection.

17 A [REDACTED].

18 Q [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 MR. McNAMARA: Objection.

22 A Y[REDACTED].

23 Q Do you know what you're suing
24 Suffolk Paving for?

25 A Yes.

1 O. W. Pagoda

2 Q What are you suing Suffolk Paving
3 for?

4 A For them to pay me the hours
5 that they never paid me, my work hours.

6 Q You're only suing for work
7 hours; correct?

8 A Yes.

9 Q And not suing for travel time
10 hours; correct?

11 MR. McNAMARA: Objection.

12 A No. My work hours.

13 Q So I am correct in saying you're
14 not suing for travel time hours; correct?

15 MR. McNAMARA: Objection.

16 Q You've answered.

17 A From the yard to the job?

18 Q You testified before that you're
19 suing for the actual time that you were
20 working on the job; correct?

21 A Yes. Because from the moment
22 that I would get to the yard -- it was
23 because we were already working.

24 Q But you weren't supposed to go
25 the yard. You were supposed to go to the job

1 O. W. Pagoda

2 site.

3 MR. McNAMARA: Objection.

4 A Who was going to put the
5 machinery up in the truck? Louie wasn't
6 going to do it.

7 Q The person driving the truck.
8 You knew that. They told you that.

9 A Everyone did it. Louie couldn't
10 watch me just standing there without doing
11 anything. He didn't allow anyone to be
12 standing there without doing anything.
13 Everyone had to be moving.

14 Q But you didn't have to be there.
15 You could have gone right to the worksite,
16 like you testified earlier.

17 MR. McNAMARA: Objection.

18 Q Correct?

19 MR. McNAMARA: Objection.

20 A No. Because he would tell us
21 that we had to get to the yard at a certain
22 hour. It was one of their orders.

23 Q And you could have driven
24 directly to the job site; correct?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A Maybe I could have, but since
3 they would tell us to do that.

4 Q They told you that you could
5 drive right to the worksite; correct?

6 MR. McNAMARA: Objection.

7 Q Your coworkers already testified
8 to that.

9 MR. McNAMARA: Objection.

10 A Not when I was there. Maybe
11 that's now.

12 Q No.

13 A Maybe that's now.

14 Q Did you ever go inside the
15 shop --

16 A What's been happening since the
17 lawsuit -- the time before that, no. From
18 when they realized about the lawsuit, they
19 would call us and say the work is going to be
20 at this place, at this address, and then we
21 would go straight there. They would go
22 straight there, but when I worked, everyone
23 had to be in the yard at 6:00, and then we
24 would leave in the trucks to the job site.

25 Q But you testified you were the

1 O. W. Pagoda

2 only one there at 6:00; do you remember that?

3 MR. McNAMARA: Objection.

4 A Not the only one; Everyone.

5 Q No, no, no, no, no. I asked you
6 before if it was you, so you were lying to me
7 before?

8 MR. McNAMARA: Objection.

9 A No, I understood everyone.

10 Q No, no, no. I asked you the
11 question: If it was Louie, Chris, Tommy, and
12 you every morning at 6:00; you said yes, and
13 it was only you.

14 MR. McNAMARA: Objection.

15 A No, but I understood everyone.

16 Q So you were lying then?

17 MR. McNAMARA: Objection.

18 A I'm not lying. It wasn't only
19 me in the group.

20 Q I told you not to lie to me. I
21 just told you not to lie to me.

22 Why did you lie?

23 MR. McNAMARA: Objection.

24 Q Why did you lie?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A It's just that I'm not lying.
3 I'm not lying to you. I'm not lying. I
4 understood the whole group, because I didn't
5 work alone in a group. I wasn't the only one
6 to do all of the work. There had to be five
7 or six people in each group. So everyone
8 would get to the yard at that hour.

9 Q Did you ever write down the
10 hours that you worked?

11 A What was I going to write them
12 down on? Whether I wrote them down or not --
13 there were people who wrote them down and
14 gave them to Louie, and what he did was tear
15 it up and throw it away. Why am I going to
16 write them down? Why should I write down the
17 hours if they wouldn't pay me for all of
18 them?

19 Q So is the answer to my question --

20 A Why should --

21 Q Hey, hey. I'm asking you a
22 question.

23 MR. McNAMARA: Counselor --

24 A Yes, but don't yell at me like
25 that.

1 O. W. Pagoda

2 Q I'm asking you a question.

3 MR. McNAMARA: Counselor, lower
4 your voice.

5 A I'm answering you. Why don't
6 you like my responses?

7 Q Because you're rambling and
8 lying.

9 MR. McNAMARA: Objection.

10 Q Tell the truth.

11 A I'm not lying.

12 Q Answer the questions that I ask
13 you and nothing more. If you want to talk to
14 somebody, you can talk to your attorney all
15 you want on your own time.

16 Do you understand that?

17 A (No verbal response.)

18 Q Do you understand that?

19 A Yes.

20 Q Okay. Before I asked you if
21 you, Tommy, Louie and Chris were the only
22 people at the shop at 6:00, and you said yes.
23 I asked: Was anybody else there, and you
24 said no.

25 A I understood --

1 O. W. Pagoda

2 Q Why did you lie?

3 MR. McNAMARA: Objection.

4 A No, I didn't lie. I thought you
5 asked me if besides Louie, Chris, and Tommy,
6 if there was anyone else out of the office
7 people. That's what I understood.

8 Q Do you remember when I said to
9 you that if you don't understand a question,
10 you have an obligation to tell me that you do
11 not understand that question?

12 A Yes, but I thought --

13 Q Do you remember me telling you
14 that if you provide an answer to a question
15 that I ask you, it will be assumed that you
16 understood that question?

17 Do you remember that?

18 A Yes.

19 Q So you understood the question
20 when you answered it, and now you want to
21 change your answer; is that correct?

22 A No, it's not that I'm changing
23 it, but it was the way that I understood it.

24 Q So you don't want to change your
25 answer?

1 O. W. Pagoda

2 A If I ask you what you're asking
3 me, you're going to tell me that I don't have
4 a good memory.

5 Q It's clear that you don't have a
6 good memory. That's just based upon your
7 testimony.

8 MR. McNAMARA: Objection.

9 Q And I understood you're getting
10 upset and frustrated, just do what I tell you
11 and answer the questions, and there won't be
12 a problem.

13 A But you have no right to speak
14 to me like that. You have no right to yell
15 at me. Ask me the questions that you want
16 to, but don't yell at me. I'm not your son.

17 Q No, you're not.

18 A You have no reason to yell at
19 me. Ask me the questions that you want.

20 Q Sir, you're at a deposition
21 because you are suing my client -- please
22 don't pick your nose.

23 At this deposition, I will be
24 asking you questions.

25 Do you understand that?

1 O. W. Pagoda

2 A Yes, I understand that.

3 Q And I have a right to demand
4 that you provide answers to those questions.

5 Do you understand that?

6 A Yes, I'm giving you responses.

7 Q To the extent you're giving me
8 responses to questions that I am not asking
9 you, I will indicate my displeasure with
10 that.

11 MR. McNAMARA: Objection.

12 A Because you don't like to hear
13 the truth.

14 Q You don't like speaking the
15 truth.

16 MR. McNAMARA: Objection.

17 Q I want you to just answer the
18 questions I ask you.

19 Are you a person?

20 MR. McNAMARA: Objection.

21 A What am I? What do you think I
22 am?

23 Q I think you're not answering the
24 question.

25 A Of course I'm a person. What am

1 O. W. Pagoda

2 I?

3 Q The only answer you can give to
4 that question is: Yes, I am a person.

5 Is it daytime right now?

6 A No, it's nighttime.

7 MR. ZABELL: Let the record
8 reflect that it is 12:25.

9 A You know that it is daytime.
10 What do you think; that I'm stupid? I'm not
11 stupid.

12 Q I think you're playing games.

13 MR. McNAMARA: Objection.

14 A That's what you think, because
15 you don't like to be told the truth.

16 Q Are you at a deposition?

17 MR. McNAMARA: Objection.

18 A Of course. I'm giving
19 statements.

20 Q Again, you have a complete
21 inability to answer the questions that I'm
22 asking you.

23 Does the man next to you have a
24 beard?

25 A No, I'm blind, and I can't see.

1 O. W. Pagoda

2 What do those questions have to do with the
3 case? Ask me about the hours that I wasn't
4 paid for.

5 Q Is there a man named Patrick to
6 your right?

7 A Yes.

8 Q Does he have a beard?

9 A (No verbal response.)

10 Q Are you refusing to answer the
11 question?

12 A Yes, of course. You know what
13 he has. Why are you asking me?

14 Q Because I'm trying to train you
15 to answer just the questions I pose before
16 you.

17 A Then ask me questions about the
18 case, about the lawsuit.

19 Q I get to determine who asks the
20 questions and what questions are asked. If
21 you continue with this --

22 A You're trying to intimidate me.

23 Q -- I will call the Judge and
24 have the Judge direct you. Although, I would
25 hope that your attorney would communicate to

1 O. W. Pagoda

2 you that you need to answer the questions and
3 to stop lying.

4 MR. McNAMARA: Objection.

5 A It's just that I'm not lying to
6 you.

7 Q Really? Are you blind?

8 MR. McNAMARA: Objection.

9 A You know that I'm not.

10 Q Exactly. Then, why would you
11 tell me before that you were blind and can't
12 see?

13 A No. Because they're questions
14 that you -- you know I'm not blind.

15 Q I know that's why I was
16 surprised that you lied to me about it.

17 MR. McNAMARA: Objection.

18 A There are questions that you
19 know aren't true.

20 Q That's why I asked you if it was
21 daytime outside, and you said, no, it's night
22 at 12:25.

23 A Because it's daytime.

24 Q Then, just answer it's daytime.
25 Just answer the questions.

1 O. W. Pagoda

2 Does the man next to you have a
3 beard; yes or no?

4 A Yes, yes, he does.

5 Q Is the woman next to you
6 translating for you today?

7 A Yes.

8 Q Is it light outside?

9 MR. McNAMARA: Objection,
10 Counselor.

11 A Yes.

12 Q It is daytime?

13 A Yes.

14 Q See, those are direct questions
15 and direct answers. As long as you give me
16 direct answers, we will be able to continue
17 this deposition at an appropriate pace.

18 Do you understand that?

19 A Yes.

20 Q Is this difficult for you?

21 A No. But --

22 Q I don't want to know a but.

23 A Okay, okay, but you don't have
24 to yell.

25 Q I'm not yelling. Trust me.

1 O. W. Pagoada

2 A Of course you're yelling.

3 Q If I was yelling, your attorney
4 would be putting something on the record.

5 A Ask me the questions that you'd
6 like, but don't yell at me.

7 Q How long is it going to take you
8 to go home and get the documents that we
9 discussed earlier?

10 A About forty minutes.

11 Q I think you should go now. We
12 will be waiting for you.

13 A If you want, I'll go now.

14 Q I just said I think you should
15 go now.

16 A Okay. I don't think it should
17 take more, but I hope it's not a problem in
18 case I do.

19 Q It may be, but we'll see.

20 A I think I should be back in
21 forty minutes.

22 MR. McNAMARA: I guess we should
23 break for lunch. It's 12:30.

24 MR. ZABELL: Sure.

25 (Whereupon, a luncheon recess

1 O. W. Pagoada

2 was taken from 12:30 p.m. to 1:45 p.m.)

3 MR. ZABELL: Back on the record.

4 Q Mr. Pagoada, you understand
5 you're still under oath; do you not?

6 A Yes.

7 Q That means you still have to
8 tell the truth.

9 Do you understand that?

10 A Yes.

11 Q No lying; okay?

12 A Yes.

13 (Document consisting of copies
14 of Mr. Pagoada's W-2s were marked as
15 Defendants' Exhibit Number 2, for
16 identification, as of this date.)

17 Q I'm going to show you a
18 document. (Handing.)

19 Do you know what this is?

20 A (Reviewing document.) It's a
21 copy of a check stub from -- W-2s for the
22 income tax.

23 Q Is it a copy of a check stub or
24 is it copies of W-2s?

25 A No, the W-2s.

1 O. W. Pagoda

2 Q Right. So they're not check
3 stubs?

4 A No.

5 Q Why did you think they were
6 check stubs?

7 MR. McNAMARA: Objection.

8 A Because I only noticed Payco. I
9 didn't notice that it was a copy of the W-2.

10 Q Are they copies of your W-2s?

11 A Yes.

12 Q Is the first one for the
13 year 2007?

14 A Yes.

15 Q That's for Payco Industries?

16 A Yes.

17 Q And the second one is for 2006?

18 A Yes.

19 Q Is that Payco Industries?

20 A Yes.

21 Q The next one is 2010; correct?

22 A Yes.

23 Q That's for RL Associates?

24 A Yes.

25 Q Then, the next one is 2010. Is

1 O. W. Pagoada

2 that Powell & Lunati Paving?

3 A Yes.

4 Q Is that the same as RL Associates?

5 A Yes, the same one.

6 Q Then, there is another one for

7 RL Associates?

8 A Yes.

9 Q Then, another one, 2010 for

10 East Port Contracting?

11 A Yes.

12 Q Then, there's another one for

13 the year 2010 for Forum Novelty?

14 A Yes.

15 Q When did you work at

16 Forum Novelty?

17 A I worked in February, I think.

18 Q How come you didn't tell me

19 about that?

20 A January, February. I don't

21 remember.

22 Q So you remember now?

23 A Yes, now that I see it. It's a

24 factory. I think it's a factory. I worked

25 there about three months. I didn't remember.

1 O. W. Pagoza

2 Q And now you remember?

3 MR. McNAMARA: Objection.

4 A Yes, because I saw it.

5 Q If you didn't see it, you still
6 wouldn't remember?

7 MR. McNAMARA: Objection.

8 A No.

9 Q So you're memory is not that
10 good; right?

11 MR. McNAMARA: Objection.

12 A (No verbal response.)

13 Q You can answer.

14 A Yes.

15 Q But you know your memory is not
16 that good; right?

17 MR. McNAMARA: Objection.

18 A No, I forgot.

19 Q A lot?

20 MR. McNAMARA: Objection.

21 A More or les. A little.

22 Q Do you forget a lot, or do you
23 forget a little?

24 A Sometimes I forget a lot of
25 things.

1 O. W. Pagoda

2 (Document consisting of a copies
3 of Mr. Pagoda's pay stubs from Payco
4 Industries was marked as Defendants'
5 Exhibit Number 3, for identification,
6 as of this date.)

7 Q I know. I'm going to show you a
8 document identified as Defendant's Exhibit
9 Number 3. (Hanging.)

10 A What is that?

11 Q You tell me.

12 A (No verbal response.)

13 Q Do you know what these documents
14 are?

15 A They're the copies of the stubs.

16 Q Copies of what stubs?

17 A Payco checks.

18 Q So they're copies of check stubs
19 that you received from Payco Industries;
20 correct?

21 A Yes.

22 Q From September of 2006 to August
23 of 2008; correct?

24 A Yes.

25 Q Are these all of the pay stubs

1 O. W. Pagoda

2 you received from Payco Industries?

3 A Yes. And the other ones that I
4 gave you, yes, that's all of them.

5 Q Are you sure?

6 A Yes. I don't remember any more.
7 The ones that I brought you first, and the
8 ones that I went to get.

9 Q You testified as to the hourly
10 rate you received when you worked for Suffolk
11 Paving; did you not?

12 A What is the question?

13 Q Do you remember testifying about
14 the hourly wage that you received when you
15 were at Suffolk Paving?

16 A Yes, twenty and some change. I
17 don't remember how many cents.

18 Q Didn't you look at your pay
19 stubs?

20 A No. I just went to get them.

21 Q You never looked at them?

22 A No, I didn't look at them.

23 Q So you have know idea what they
24 said?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A No, I didn't look at them. I
3 don't remember. I don't remember.

4 Q Do you know if they were
5 accurate when you received them?

6 MR. McNAMARA: Objection.

7 A The checks? If what was
8 accurate; the checks or what? I don't
9 understand.

10 Q If the check stubs were
11 accurate.

12 A Yes.

13 Q They were accurate; correct?

14 MR. McNAMARA: Objection.

15 A Yes.

16 Q Did you ever make an hourly wage
17 rate more than the \$20 and some change?

18 A Yes. When they were paying me
19 prevailing wage rates when they were State
20 jobs.

21 Q Every time you worked prevailing
22 wage, they paid you prevailing wage rates;
23 correct?

24 A Yes.

25 Q So they never not paid you

1 O. W. Pagoda

2 prevailing wage rates; correct?

3 A Yes, they would pay me
4 prevailing wage. When I went, they would pay
5 me.

6 Q So on every prevailing wage job
7 that you got that you worked on, you got paid
8 correctly?

9 A Yes.

10 Q Do you know how much you made
11 per hour when you worked on prevailing rate
12 wage jobs?

13 A I think it was -- I'm not very
14 sure, but about fifty-one and some change. I
15 don't remember exactly.

16 Q Did you ever get paid overtime
17 when you worked on prevailing wage rate jobs?

18 A No, never.

19 Q And your paychecks never
20 indicated that you got paid time-and-a-half
21 for hours worked on prevailing wage rate
22 jobs; correct?

23 A No.

24 Q If I could show you a pay stub
25 that says something different, you would be

1 O. W. Pagoda

2 lying; correct?

3 MR. McNAMARA: Objection.

4 A Not that I recall. Not I
5 recall.

6 Q Not that you recall, but you
7 don't know because you never looked at your
8 pay stubs; correct?

9 MR. McNAMARA: Objection.

10 A It's just that they never paid
11 me. No, they never paid me regular. How are
12 they going to pay me prevailing wage? They
13 never paid me overtime. Regular hours, no
14 prevailing wage. Never.

15 Q So none of your checks show that
16 you got paid overtime; correct?

17 A No.

18 Q How do you know that if you
19 never looked at your checks?

20 MR. McNAMARA: Objection.

21 A That, I remember. That, I
22 remember. It was my job.

23 Q Are you sure?

24 A That was my job. I knew that
25 they had never paid me.

1 O. W. Pagoda

2 Q You're absolutely sure that none
3 of your checks show that you were paid
4 time-and-a-half; correct?

5 A No.

6 Q No, you're not sure, or yes, you
7 are sure?

8 A I'm sure that they never paid
9 me.

10 MR. ZABELL: I'll be right back.

11 (Whereupon, a brief recess was
12 taken at this time.)

13 MR. McNAMARA: Do you have all
14 your ducks in a row, Counselor?

15 MR. ZABELL: I don't have ducks.
16 Really? Do you want to play that game
17 on the record, Counselor? Is that what
18 you want?

19 MR. McNAMARA: No, we're okay.

20 MR. ZABELL: That's what I
21 thought. You know I can be a bit
22 caustic.

23 MR. McNAMARA: No, I never
24 noticed that before.

25 (Document consisting of a copy

1 O. W. Pagoada

2 of a check stub payable to Osmar
3 Wilfredo was marked as Defendants'
4 Exhibit Number 4, for identification,
5 as of this date.)

6 Q Mr. Pagoada, I'm going to show
7 you a document that I just marked this very
8 second as Plaintiff's Exhibit Number 4.

9 Do you know what that document
10 is? (Hanging.)

11 A (Reviewing document.) Yes, it's
12 a check stub.

13 Q Whose check stub?

14 A Mine.

15 Q For what employer?

16 A For me, Osmar.

17 Q Right. Now look down at the
18 bottom.

19 A (Witness complies.)

20 Q Do you see that?

21 A Yes.

22 Q Who is Osmar Wilfredo?

23 A I am.

24 Q Oh, so you didn't tell them that
25 your name is Osmar Pagoada?

1 O. W. Pagoda

2 A Yes.

3 Q Yes, you did tell them, or no,
4 you did not tell them?

5 A Yes.

6 Q Yes, what?

7 A Yes, I told them.

8 Q But none of your pay stubs were
9 made out in the name of Osmar Pagoda; is
10 that correct?

11 A Yes, but --

12 Q Eh, eh, eh. There's no question
13 before you. I don't want you to answer the
14 question until I ask you it.

15 Do you understand that?

16 A Okay. Then, when you ask me the
17 question, I'll tell you why. Why it appears
18 just like this. Ask me when you're ready,
19 and I'll tell you the reason why, the reason
20 why it says Osmar Wilfredo.

21 Q You have no ability to keep your
22 mouth shut; do you?

23 A (No verbal response.)

24 Q You have no ability to keep your
25 mouth shut; do you?

1 O. W. Pagoada

2 A (No verbal response.)

3 Q Do you?

4 A Yes, you want me to be quiet.

5 Q Right.

6 A Yes.

7 Q Why did you lie to Suffolk

8 Paving and tell them your name was Osmar

9 Wilfredo instead of Osmar Pagoada?

10 MR. McNAMARA: Objection.

11 A (No verbal response.)

12 Q Answer the question.

13 A Okay.

14 Q We've been waiting for you.

15 A When I went to fill out the
16 application, I put down my complete name, but
17 they gave me the check stubs like this
18 (indicating). Then, I spoke with them and I
19 would always tell them, and they would never
20 change. Tommy would say yes, next week, next
21 week.

22 Until one day, they finally
23 changed it, because I didn't want it to read
24 just like this, Osmar Wilfredo. Then, I told
25 them to put down Osmar W., for Wilfredo, and

1 O. W. Pagoada

2 Pagoada. Then, they changed it, but it was
3 difficult.

4 Q That's your story?

5 MR. McNAMARA: Objection.

6 A Yes.

7 Q That's what you were dying to
8 tell me?

9 A Yes.

10 Q You see the last check on that
11 page?

12 A Yes.

13 Q You see where it say you got
14 paid half time for four hours?

15 A Yes.

16 Q You didn't get paid half time;
17 did you?

18 A No.

19 Q You got paid --

20 A I don't understand.

21 Q You got paid \$43.58 an hour;
22 didn't you?

23 A Yes, that's true.

24 Q That's overtime; isn't it?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 Q Yes or no?

3 A Yes.

4 Q Give that back to me.

5 A (Handing.)

6 Q I thought that you said to me
7 that you never received overtime.

8 Why did you lie to me?

9 MR. McNAMARA: Objection.

10 A No. It's just that I don't
11 understand that there.

12 Q But you got paid overtime;
13 didn't you?

14 MR. McNAMARA: Objection.

15 A It's just that it says, ten,
16 eight, then four. That's why I don't
17 understand. It's not that it says forty and
18 then the rest of them. It only says ten and
19 eight and four. How many hours is that?

20 Q Don't you know math?

21 A That's ten and eight, that's
22 eighteen and four. There is ten and there is
23 eight. That's eighteen and then four.
24 That's twenty-two; isn't it?

25 Q Didn't you get paid four hours

1 O. W. Pagoda

2 of overtime?

3 MR. McNAMARA: Objection.

4 A Well, maybe they paid me those
5 hours, but I don't understand why. It's
6 supposed to be after forty. I don't
7 understand why they paid me like that.

8 Q So you don't understand your pay
9 stub.

10 MR. McNAMARA: Objection.

11 Q Is that what your testimony is?

12 A (No verbal response.)

13 Q Is that what your testimony is;
14 yes or no?

15 A Yes.

16 Q Maybe all of this is because you
17 don't understand your pay stubs.

18 MR. McNAMARA: Objection.

19 Q Correct?

20 A (No verbal response.)

21 Q Si or no?

22 A Yes.

23 Q Do you read English?

24 A No.

25 Q Do you read Spanish?

1 O. W. Pagoda

2 A Yes.

3 Q Can you write in Spanish?

4 A Yes.

5 Q Did you ask anybody to interpret
6 this for you?

7 A Here, yes.

8 Q Who?

9 A My attorney said that I was
10 going to have an interpreter here because he
11 knows that we don't all speak English.

12 Q If you don't understand your pay
13 stubs and you know that on at least one of
14 the pay stubs you got overtime, couldn't this
15 whole thing have been a mistake?

16 MR. McNAMARA: Objection.

17 A No, I don't think so.

18 Q You said before that this whole
19 thing could be, because you don't understand
20 your paychecks.

21 MR. McNAMARA: Objection.

22 A Yes, but like I said, I never
23 see overtime in any of them.

24 Q You just saw overtime; didn't
25 you?

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A It's just that there are only
4 twenty-two hours there, and overtime is after
5 forty, isn't it?

6 Q Didn't that check show that you
7 got paid four hours of overtime?

8 MR. McNAMARA: Objection.

9 A No. I don't understand why
10 those four hours are there like that.

11 Q Aren't those four hours at a pay
12 rate that is double your regular pay rate?

13 MR. McNAMARA: Objection.

14 A Yes.

15 Q You're wearing some fancy
16 sneakers; aren't you?

17 MR. McNAMARA: Objection.

18 A Thank you.

19 Q You're welcome.

20 But they're fancy sneakers;
21 right?

22 MR. McNAMARA: Objection.

23 A Yes.

24 Q I like them. They look sharp.

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 Q You like them?

3 A Yes, thank you.

4 Q Where did you get them?

5 A At the mall in Massapequa.

6 Q Were they expensive?

7 A Maybe \$120.

8 Q Wow, that's more than you send
9 home to your son; isn't it?

10 MR. McNAMARA: Objection.

11 A Yes.

12 Q When did you buy them?

13 A Last Christmas.

14 Q Were you working then?

15 A No, not anymore.

16 Q Why were you buying expensive
17 sneakers, more than you sent home to your
18 son, if you weren't working?

19 A Well, because I always save my
20 money for when it's cold because I don't
21 work.

22 Q So you have money saved up?

23 MR. McNAMARA: Objection.

24 A Not now, not this year. Very
25 little.

1 O. W. Pagoda

2 Q Are you still sending money home
3 to your son?

4 MR. McNAMARA: Objection.

5 A Yes, I send him.

6 Q I thought you said you haven't
7 been working, and you don't have any money
8 saved up.

9 A No. It's just that I'm not
10 working every day, not every day. Two days,
11 up to three days.

12 Q So if you're working two days a
13 week, how much are you making?

14 A Two days.

15 Q How much money are you making?

16 A Maybe \$300.

17 Q A day or a week?

18 A No, a week. \$150 per day, \$130,
19 it depends.

20 Q What does it depend upon?

21 A It depends with whom I go to
22 work, to whatever company I go. Because
23 sometimes I go with people that know me. If
24 they need somebody for today, I go and help
25 them work, like that.

1 O. W. Pagoda

2 Q Are they paying you in cash or
3 in check?

4 A No, they pay me in cash, cash.
5 Because it's only one day.

6 Q Are you declaring that cash on
7 your income tax returns?

8 MR. McNAMARA: Objection.

9 A No, not that. Well, up to now.

10 Q So after I brought it to your
11 attention, you're going to file it on your
12 income tax returns; right?

13 MR. McNAMARA: Objection.

14 A Yes.

15 Q When was the last time you filed
16 an income tax return?

17 A This last year.

18 Q What year was that?

19 A Now, 2010. I do them every
20 year.

21 Q Do you do them yourself, or do
22 you have someone help you?

23 MR. McNAMARA: Objection.

24 A No. I go to where they fill
25 them out.

1 O. W. Pagoda

2 Q Where do you go to fill them
3 out?

4 MR. McNAMARA: Objection.

5 A In Hempstead.

6 Q Who helps you fill them out in
7 Hempstead?

8 A The woman's name is Jenny, I
9 think, I think. I don't really remember her
10 name. Jenny, yes.

11 Q Do you pay her?

12 A Yes, for her to fill them out.
13 Everyone goes there.

14 Q How much do you pay her?

15 MR. McNAMARA: Objection.

16 A Depends on how they do them.
17 \$100. If they do them by mail or -- I don't
18 remember how to say that. When they come
19 fast, when they come within like three days,
20 when the money comes within three days. What
21 do you call that? I always do them by mail,
22 though.

23 Q Do you get money back?

24 MR. McNAMARA: Objection.

25 A Yes, a little.

1 O. W. Pagoda

2 Q What's a little?

3 A Depends on what I earn.

4 Sometimes they return \$1,800, like that,
5 \$2,000. It depends on what I earn. There
6 are some where they've only given me \$300
7 back. It's not here (indicating).

8 Q Where is it?

9 A Those, my attorney has them.

10 Q Really?

11 A Yes.

12 Q Do you know if they turned them
13 over?

14 MR. McNAMARA: Objection.

15 A They're from Suffolk Paving. He
16 has them, he has them. I sent them to him
17 not that long ago, about three days ago; yes.

18 Q Do you know we're going to have
19 to get those documents and bring you back
20 here to question you about them? Do you
21 understand that?

22 MR. McNAMARA: Objection.

23 A The ones from Suffolk?

24 Q Yes.

25 MR. McNAMARA: Counselor, he's

1 O. W. Pagoada

2 not going to have to come back. The
3 tax returns are already --

4 Q You're aware of that; correct?

5 MR. McNAMARA: Objection.

6 A Yes. I didn't bring them
7 because they have them.

8 Q Do you know how much money you
9 made when you worked at Suffolk Paving
10 in 2008?

11 A Yes. I don't remember exactly,
12 but the first months in 2008 when I worked, I
13 earned about \$5,333, more or less, and
14 in 2009, \$18,000-something. I don't
15 remember, but I do know that I earned
16 \$18,000.

17 (Document consisting of copies
18 of Payco, Powell & Lunati, and RL
19 Associates of Long Island pay stubs
20 were marked as Defendants' Exhibit
21 Number 5, for identification, as of
22 this date.)

23 Q Mr. Pagoada, I'm going to show
24 you a document I've just marked as
25 Defendants' Exhibit 5. (Handing.)

1 O. W. Pagoza

2 Take a few moments. I want you
3 to go through each and every page; okay?

4 A Yes. (Witness complies.)
5 (Perusing.)

6 Q You had an opportunity to look
7 at the document?

8 A Yes.

9 Q What does the document say?

10 A There are the stubs, the copies
11 of stubs.

12 Q Copies of what stubs?

13 A The Payco stubs.

14 Q Is it all Payco stubs?

15 A No, there are some that aren't.

16 Q Then, why would you tell me
17 they're just Payco stubs if it's not all
18 Payco stubs?

19 A No, because I didn't notice
20 these (indicating).

21 Q Really? Because I gave you a
22 long enough time to take a look. I don't
23 know why it's so difficult for you to give me
24 an honest answer.

25 MR. McNAMARA: Objection.

1 O. W. Pagoada

2 A I'm not lying.

3 Q No, you're just not being
4 honest.

5 What is this document?

6 A They're stubs, the copies of the
7 stubs.

8 Q Copies of what stubs?

9 A Payco. And they're from
10 Ralph Lunati where I used to work.

11 Q Is that it?

12 A Yes.

13 Q Isn't there stubs from Powell &
14 Lunati Paving and Construction?

15 A Yes, that's the same thing.

16 Q And RL Associates of Long
17 Island?

18 A Yes, that's the same one. Then
19 after, they joined.

20 Q After, they joined what?

21 A Ralph Lunati with Powell, and
22 after, they united. Powell is the same one
23 as the owner of Payco.

24 Q You seem awfully proud of
25 yourself.

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A No, why?

4 Q I don't why. I'm asking why
5 you're so proud of yourself right now.

6 A No. I don't feel proud. I'm
7 just giving you a response.

8 Q You were just giving me a smile.
9 I thought maybe you were proud of those fancy
10 sneakers you have.

11 MR. McNAMARA: Objection.

12 A No, they're the only ones.
13 Anyone can wear them.

14 Q How do you keep them so white?

15 A I like to clean them. I clean
16 them.

17 Q What do you use?

18 MR. McNAMARA: Objection.

19 A Just a wet rag.

20 Q Do they come in wide widths?

21 MR. McNAMARA: Objection.

22 A I don't know.

23 Q Not everybody could wear them.

24 A No, I guess they do. If it's a
25 big size, they have to be wide.

1 O. W. Pagoda

2 MR. ZABEL: Let's take a short
3 break.

4 (Whereupon, a recess was taken
5 from 2:33 p.m. until 2:49 p.m.)

6 Q You see the document in front of
7 you, sir?

8 A Yes.

9 Q Those are pay stubs that you
10 provided us; correct?

11 A Yes.

12 Q The first one shows in 2006, you
13 were making \$14 an hour; is that correct?

14 A Yes, that's true.

15 Q Flip through those pages.

16 A (Witness complies.)

17 Q While you were working at Payco,
18 did you receive any overtime?

19 A Yes, I did receive it when I
20 worked it.

21 Q Take a look at the year 2006.
22 Show me if you see any overtime.

23 A (Witness complies.) When I
24 worked it, they would pay me for them. This
25 is 2006 (indicating).

1 O. W. Pagoda

2 Q May I see the page you're
3 looking at?

4 A (Handing.)

5 Q In 2006, you just worked
6 overtime that one time?

7 MR. McNAMARA: Objection.

8 A No, I always worked. There is
9 more here, there's more. There, they paid me
10 whatever I worked. Here it is (indicating).

11 Q How many hours of overtime did
12 you work in 2006, according to your pay stub;
13 two hours, three hours? Go, ahead count.

14 A Sometimes. Sometimes I worked
15 more.

16 Q I want you to count.

17 A Yes, there are forty-eight here
18 (indicating).

19 Q Forty-eight hours of overtime?

20 A No, no. Eight, Eight.

21 MR. McNAMARA: Counsel, what is
22 the point of this right now?

23 MR. ZABELL: I'm going to ignore
24 what I consider to be stupid questions.

25 A And here (indicating), I have

1 O. W. Pagoda

2 fourteen.

3 Q Fourteen hours?

4 A I have thirty-seven, two for
5 prevailing wage -- no, I have thirty-seven
6 regular ones, and I have two for prevailing
7 wage.

8 Q I don't care about prevailing
9 wage. I just want to talk about overtime.

10 A And I have fourteen overtime.

11 Q Is that four or fourteen?

12 A Fourteen.

13 Q Okay, so far you got twenty-two
14 hours.

15 A I have eight here (indicating),
16 I have eleven here (indicating), and I have
17 fourteen here (indicating).

18 Q You're only talking about 2006;
19 right?

20 A Yes, yes, 2006. Here,
21 (indicating), I don't understand this. Here
22 (indicating), I have eight.

23 Q No.

24 A No.

25 Q Are you able to read that?

1 O. W. Pagoda

2 A Yes, the thing is that you see
3 here (indicating), it says, "regular,
4 regular, overtime, overtime." They're
5 different. I don't understand this.

6 Q Okay, continue.

7 A Here (indicating), I have
8 thirty-eight regular. Here (indicating), I
9 have twenty.

10 Q Twenty hours of overtime?

11 A Yes, in 2006. You can see it.
12 Here (indicating), I have ten. Here
13 (indicating), I have fourteen, here
14 (indicating), I have fourteen, here
15 (indicating), I have thirteen. One,
16 one-and-a-half, nine.

17 Q Are you done?

18 A No, there are more.

19 Q Go ahead. Keep going.

20 A You told me just the overtime;
21 right?

22 Q Yes, just the overtime for 2006.

23 A Yes. This is already 2007
24 (indicating).

25 Q I don't want 2007. If you look

1 O. W. Pagoda

2 at all the numbers you worked overtime in
3 2006, that's, roughly, the amount of overtime
4 you worked in 2007; correct?

5 MR. McNAMARA: Objection.

6 Q Correct?

7 A Yes.

8 Q And it's, roughly, the same
9 amount you earned in 2008; correct?

10 MR. McNAMARA: Objection.

11 A Yes.

12 Q And it's, roughly, the same
13 amount you earned in 2009; correct?

14 A What did you say?

15 Q It's, roughly, the same amount
16 of overtime you worked in 2009, as well;
17 correct?

18 A It could be. I'm not sure.

19 Q Yes, it's all about the same;
20 right?

21 A Yes.

22 Q Same thing for 2010; correct?

23 A Yes.

24 Q Now, on days that it rained,
25 sometimes you'd be sent home from work;

1 O. W. Pagoda

2 correct?

3 A Yes, yes.

4 Q Sometimes when it rained, you
5 wouldn't even be called into work; correct?

6 A No. Because we already knew
7 that if we woke up and it was raining, we
8 wouldn't work. They would tell us the day
9 before.

10 Q So if you woke up and it was
11 raining, you wouldn't come into work, and
12 then sometimes if it started raining in the
13 middle of the day, you'd be sent home;
14 correct?

15 A (No verbal response.)

16 Q Correct?

17 A Yes.

18 Q Did you ever go home from work
19 sick?

20 A No.

21 Q Never took a sick day?

22 A No.

23 Q Did you ever hurt yourself on
24 the job?

25 A No.

1 O. W. Pagoda

2 Q Any of your coworkers get hurt
3 on the job?

4 MR. McNAMARA: Objection.

5 A No, not that I recall.

6 Q I'll take that back, thank you.

7 A (Handing.)

8 Q How much are you suing
9 Suffolk Asphalt for?

10 A I'm suing them only for my
11 hours. I'm not indicating any amount,
12 because the hours that they owe me...

13 Q How much?

14 A No, I don't know how many hours
15 they are. I haven't figured it out, because
16 I would never write them down because they
17 never paid them.

18 Q So you never wrote them down,
19 because they would never get paid. Is that
20 your testimony?

21 A They weren't paying me for them.
22 One coworker did write them down.

23 Q And that's why you'd never write
24 them down; correct?

25 A No. Because he gave them to

1 O. W. Pagoda

2 him, and Louie tore it up and threw it away.

3 Q Who is that one coworker?

4 A His name is Ronald.

5 Q Ronald what?

6 A Ronald -- I don't know his last

7 name. I only know him by Ronald.

8 Q Is he involved in this lawsuit?

9 A No. But we all know that.

10 Q We all know that he's not

11 involved in the lawsuit?

12 A Yes. And we all know that he

13 tore up the paper.

14 Q How do you all know that?

15 A Because I saw it with my own

16 eyes.

17 Q Who was there when you saw it

18 with your own eyes?

19 A I don't remember exactly all the

20 people that were there, but -- I don't

21 remember.

22 Q Do you remember any of the

23 people that were there?

24 A No, not exactly, because since

25 they were always changing us and putting us

1 O. W. Pagoda

2 in different groups, we were different people
3 that were together. That's why I don't
4 remember exactly the people.

5 Q Did you ever get yelled at when
6 you worked at Suffolk Asphalt?

7 A No, not while I was there.

8 Q Did you ever get disciplined?

9 A No.

10 Q Would it be okay to yell at you
11 if you did something wrong at work?

12 A Yes, if somebody makes an error,
13 it's okay.

14 Q It's okay to yell at them;
15 correct?

16 A Yes, if they have a motive to.

17 Q What if they make a mistake
18 without a motive, is it okay to yell at them?

19 MR. McNAMARA: Objection.

20 A No, I don't think so.

21 Q Did anybody ever get yelled at
22 at Suffolk Asphalt?

23 A No, I don't know.

24 Q You never saw anybody getting
25 yelled at?

1 O. W. Pagoda

2 A No, not while I was there.

3 Q You only saw people being
4 treated nicely; correct?

5 A Yes, while I was there. There
6 was never anyone who got yelled at or anyone
7 who was disciplined.

8 Q Everyone was treated
9 appropriately; correct?

10 A Yes.

11 Q Okay. Now, did you ever yell at
12 any of your coworkers?

13 A No.

14 Q Did you ever fight with any of
15 your coworkers?

16 A No.

17 Q Do you like soccer?

18 A Yes.

19 Q Are those soccer shoes?

20 A No.

21 Q What kind of shoes are they?

22 A Lacoste.

23 Q With the little alligator?

24 A Yes.

25 Q Is the alligator big in

1 O. W. Pagoda

2 Honduras?

3 A Yes.

4 Q They like it there?

5 A Yes.

6 Q Why?

7 A It's my country. It's pretty.

8 Q Is your country pretty, or is
9 the little alligator pretty?

10 A No, no. I thought you were
11 talking about my country.

12 Q No. I was asking if they like
13 the Lacoste alligator in Honduras.

14 A Yes, it's a good brand.

15 Q Do you play soccer?

16 MR. McNAMARA: Objection.

17 A No, I don't play. I like it,
18 but I don't play.

19 Q Do you like baseball?

20 A No, none of them.

21 Q Did you ever see your coworkers
22 playing soccer on the job site?

23 A No. But they do say that way
24 back when, they played maybe two times when
25 there was nothing to do, there was no truck

1 O. W. Pagoda

2 or anything else to do. But when I was
3 there, no, nor did I ever see them.

4 Q Who says maybe way back when
5 there were maybe two times when they played?

6 A Everyone, because I knew that
7 they used to like to play before when there
8 was no truck.

9 Q And they all told you to say
10 that today; correct?

11 MR. McNAMARA: Objection.

12 A No, no.

13 Q Si?

14 MR. McNAMARA: Objection.

15 A No.

16 Q Si?

17 A No, I'd know it. I already knew
18 that.

19 Q You knew it because they told
20 you to say it; right?

21 MR. McNAMARA: Objection.

22 A No.

23 Q You never saw them play, though;
24 right?

25 A No, I never saw them play.

1 O. W. Pagoda

2 Q But you know that they played
3 twice; right?

4 A Yes, because they used to talk
5 sometime ago. They used to say that when
6 there was no truck, they used to go and do
7 that. They used to play.

8 Q Who are the people that would
9 say that?

10 A Everyone. When we used to talk,
11 people from the group.

12 Q Who?

13 A Nelson. I don't remember the
14 rest of them. Renato, Mendez, but I would
15 hear them when they were talking.

16 Q How did you get involved in this
17 lawsuit?

18 A Because we all came to an
19 agreement because of the overtime because it
20 wasn't fair to work twelve hours a day and to
21 be paid only eight.

22 Q Who was the leader of the group?

23 MR. McNAMARA: Objection.

24 A I really don't know. We all
25 came to an agreement. I don't know if

1 O. W. Pagoda

2 there's a leader or not.

3 Q Is it Nelson?

4 MR. McNAMARA: Objection.

5 A I don't know.

6 Q Did Nelson ever have everybody
7 over to his house to discuss this?

8 MR. McNAMARA: Objection.

9 A No, not at home. When we were
10 working, we would talk amongst ourselves.
11 When the group was working and on Friday when
12 somebody would see their check and we would
13 see how many hours they would pay us, we
14 would all discuss it, and we would say this
15 is not right.

16 Q But you never looked at your
17 check, though.

18 MR. McNAMARA: Objection.

19 Q Correct?

20 A No, no, no. Of course, I did.

21 Q You testified before that you
22 never looked at your check.

23 A How would I not have looked at
24 them?

25 Q That's what I thought, but you

1 O. W. Pagoza

2 testified that you didn't look at them.

3 MR. McNAMARA: Objection.

4 A No. How can I not look at them?

5 Q You said every week you got a
6 check. Do you remember that?

7 MR. McNAMARA: Objection.

8 A Yes.

9 Q You said that that check
10 included the hours that you worked; correct?

11 A Yes.

12 Q And we know from your testimony
13 that if you were paid overtime, it would be
14 reflected on the check; correct?

15 A Yes, if they paid me for them.

16 Q Right. And you testified
17 earlier today that you never got overtime,
18 but your checks showed that you were not
19 telling the truth when you said that;
20 correct?

21 MR. McNAMARA: Objection.

22 A No. Because for me, I never
23 saw -- I never saw a check stub that said
24 forty plus five or six. The same as they are
25 here (indicating).

1 O. W. Pagoda

2 Q So the check that you gave me
3 that I showed you showed that you got
4 overtime; correct?

5 MR. McNAMARA: Objection.

6 A Yes.

7 Q Okay, very good.

8 Now, it's very important that
9 you answer this next series of the questions
10 honestly and accurately.

11 A Yes.

12 Q You did receive overtime when
13 you worked at Suffolk Paving; correct?

14 MR. McNAMARA: Objection.

15 A I don't recall.

16 Q Didn't I just show you a check
17 that showed that you were paid for overtime?

18 MR. McNAMARA: Objection.

19 A From Suffolk.

20 Q Right. But I'm only asking you
21 about Suffolk Paving.

22 A That's why I don't understand.

23 Q When you worked for
24 Suffolk Paving, did you ever get paid for
25 overtime?

1 O. W. Pagoda

2 MR. McNAMARA: Objection.

3 A No, not for me. Where are the
4 other ones then?

5 Q I just showed you a check that
6 indicated that you got paid overtime;
7 correct?

8 MR. McNAMARA: Objection.

9 A How many hours?

10 Q Did you not testify that that
11 check indicated that you received overtime?

12 MR. McNAMARA: Objection.

13 Q Correct? Didn't I show that to
14 you?

15 A Yes.

16 Q If I showed you a check that
17 showed you that you received overtime, didn't
18 you receive overtime --

19 MR. McNAMARA: Objection.

20 Q -- from Suffolk Paving; yes or
21 no?

22 A No.

23 Q You got a check that showed that
24 you were paid overtime, but you were never
25 paid overtime. Is that what your testimony

1 O. W. Pagoda

2 is?

3 A No, not that.

4 Q Listen. I showed you a check
5 that you received overtime; correct?

6 A Yes, the one that you showed me.

7 Q That means you got paid the
8 amount on that check; correct?

9 A (No verbal response.)

10 Q Yes?

11 A Yes.

12 Q Did Louis Vecchia ever require
13 you to give him money?

14 MR. McNAMARA: Objection.

15 A Louis?

16 Q Yes.

17 A I don't understand.

18 Q Did you ever have to give money
19 to Louie?

20 A Me to Louie?

21 Q Yes.

22 A No. Why?

23 Q Louie only gave you money. He
24 never asked for money back; correct?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A No.

3 Q Am I correct?

4 A Yes.

5 Q So if Louie gave you a check
6 that showed you worked overtime and paid you
7 an overtime rate, didn't Suffolk Paving pay
8 you overtime?

9 MR. McNAMARA: Objection.

10 Q You can answer. It's logical.
11 Yes; right? Say it. Yes or no?

12 A It's just that there is
13 something that I don't understand.

14 Q Yes or no?

15 A I don't understand.

16 Q I don't know you don't
17 understand, but you have to answer the
18 question. Yes or no?

19 A But how can I answer if I want
20 to tell you something? I don't understand
21 that.

22 Q Don't tell me something. If you
23 want to tell me something, it's your lawyer's
24 responsibility to tell me. It's your
25 responsibility, as you sit here, to just

1 O. W. Pagoda

2 answer the question.

3 I showed you a check that
4 indicated that you received overtime;
5 correct?

6 A Yes, but --

7 Q And you cashed that check --

8 A -- I can't ask you a question?

9 Q No.

10 And you cashed that check --

11 A I can't ask you a question?

12 Q No, you can't ask me a question.

13 Then, you received overtime;

14 correct?

15 MR. McNAMARA: Objection.

16 A Yes.

17 Q Thank you. Was that so
18 difficult?

19 Now, let's talk about workplace
20 rules.

21 A It's just that I want to explain
22 something to you.

23 Q Did you ever receive an employee
24 handbook?

25 A No, I don't remember.

1 O. W. Pagoda

2 Q Do you know what the policies
3 were at work?

4 A No.

5 Q Did you know that there was a
6 GPS unit in most of the trucks --

7 A Yes, everybody knows that.

8 Q -- that would tell us where you
9 were and when you were there?

10 A Yes.

11 Q I'm going to show you Exhibit 11.
12 (Hanging.)

13 Do you know who that person is?

14 A (Reviewing document.) Yes, Noe.

15 Q That's your answer?

16 A Lerly.

17 Q Really?

18 A Lerly.

19 Q You think so?

20 A Yes.

21 Q He doesn't look fat?

22 A He's like that.

23 Q What?

24 A He's like that.

25 Q You think he's like that now?

1 O. W. Pagoda

2 A No. He's thinner now.

3 Q Yes, the guy I met didn't look
4 anything like him. This guy looks like he
5 had a lot of salt in his diet.

6 MR. McNAMARA: Objection.

7 A No, he's thinner now. I don't
8 know. That's not my problem.

9 Q What's your problem?

10 A One changes. People change.

11 Q Why are you changing?

12 A You see the way you saw me in
13 the passport, and now I look different.

14 Q You look skinny now.

15 I'm going to show you Exhibit 17.

16 (Handing.)

17 Have you ever seen that document
18 before?

19 A (Reviewing document.) No, no, I
20 don't know what it is.

21 Q Did you ever go inside the shop
22 at Suffolk Paving?

23 A In the office.

24 Q That's my question. Yes or no?

25 A Yes, I went into the office.

1 O. W. Pagoda

2 Q Did you ever see the bulletin
3 board?

4 A What board?

5 Q I'll take that as a no, you
6 never saw it.

7 I'm going to show you Exhibit 11.
8 (Handing.)

9 Do you know what person that is?

10 A (Reviewing document.) No, I
11 don't know who that is.

12 Q Thank you.

13 A Walter? No, I don't know if
14 it's Walter or not. I don't know. I don't
15 know who it is. I don't know.

16 Q I understood the first time you
17 said it. Thank you. Don't overplay it.

18 Do you have any idea how much
19 money you're suing Suffolk Paving for?

20 A No, I have no idea.

21 Q Do you have any idea about how
22 you can go about figuring out how much you're
23 suing them for?

24 A I would have to figure out a
25 budget, more or less, of the hours that I

1 O. W. Pagoda

2 worked.

3 Q Is that your way of saying you'd
4 have to kind of guess a little bit?

5 MR. McNAMARA: Objection.

6 A No, I don't know exactly.

7 Q Is that a guess?

8 MR. McNAMARA: Objection.

9 A No, I don't know exactly.

10 Q Right. But you don't know
11 exactly what days you worked and how many
12 hours you worked each day; correct?

13 A No, I'm not going to -- I can't
14 remember that.

15 Q You'd have to guess; correct?

16 MR. McNAMARA: Objection.

17 A (No verbal response.)

18 Q You can say it. You can guess.

19 A No.

20 Q You wouldn't guess?

21 A No.

22 Q Well, then, how do you know what
23 days you worked and how many hours you worked
24 on those days?

25 A We all know that we worked more

1 O. W. Pagoda

2 than forty hours and that they weren't paying
3 us. Everyone knows that.

4 Q Every week?

5 A Yes, everybody knows that. That
6 was every week.

7 Q What about the weeks that it
8 rained and you didn't work a full day?

9 MR. McNAMARA: Objection.

10 A Yes.

11 Q What about the beginning of the
12 season where you didn't work all week?

13 MR. McNAMARA: Objection.

14 Q What about the end of the season
15 where you didn't work all week?

16 A I don't know, but --

17 Q So you didn't work that much?

18 A Yes.

19 Q Right. And I think you
20 testified that some days you worked until
21 9:00, and some days you worked until 6:00;
22 correct?

23 A Yes.

24 Q Which days did you stay until
25 9:00?

1 O. W. Pagoda

2 A Look --

3 Q No, no, not look. Just answer
4 my questions.

5 A How can I answer you? How can I
6 explain this to you?

7 Q You could tell me the specific
8 days, or you can tell me you don't know.
9 It's okay to say you don't know if you don't
10 know the answer.

11 MR. ZABELL: Counselor, tell him
12 if he doesn't know the answer, then he
13 can say he doesn't know.

14 MR. McNAMARA: If you're not
15 sure of an answer, you're able to tell
16 the attorney that you're not sure.

17 Q You see? Do you know the days
18 that you worked until 9:00?

19 A No, not the days, not the days.

20 Q Do you know what days you worked
21 until 8:00?

22 A No, not exactly.

23 Q Do you know what days you worked
24 until 7:00?

25 A Not the day, but I do remember

1 O. W. Pagoda

2 where.

3 Q Where did you work until 7:00?

4 A We did a street in Brentwood.

5 The street's name is Broadway.

6 Q When did you do that; from what
7 period of time to what period of time?

8 A From 6:00 a.m. -- 7:00 p.m.,
9 8:00 --

10 Q When?

11 A -- those were the hours that we
12 got out.

13 Q In what year?

14 A Two days.

15 Q In what year?

16 A Two days. 2010 -- no, excuse
17 me, 2009.

18 Q Was it 2009 or 2010?

19 A No, 2009. 2010, I didn't work
20 in Suffolk.

21 Q In what month?

22 A I don't remember the month. I
23 don't remember the month.

24 Q Is that all you remember?

25 A Yes.

1 O. W. Pagoda

2 Q So you remember working until
3 8:00 for two days in 2009. You just don't
4 remember when; correct?

5 A Yes, I don't remember.

6 Q And you don't remember receiving
7 overtime pay from Suffolk Asphalt, but you
8 acknowledged receiving a check that shows you
9 received overtime pay.

10 MR. McNAMARA: Objection.

11 Q Correct?

12 A Yes, in that one, but you don't
13 let me explain it to you.

14 Q It's not my job to let you
15 explain. That's what you have an attorney
16 for.

17 You're not suing for any front
18 pay; correct?

19 A Sorry?

20 Q Are you suing for front pay?

21 MR. McNAMARA: Objection.

22 A No, I only want my hours.

23 Q When you worked on prevailing
24 wage jobs, you got prevailing wage rates of
25 pay; correct?

1 O. W. Pagoda

2 A Yes.

3 Q So you don't have any prevailing
4 wage claims; correct?

5 A No, but --

6 Q So your answer to my question is
7 no; correct?

8 A (No verbal response.)

9 Q The answer to my question is
10 correct; correct?

11 MR. McNAMARA: Objection.

12 A Yes.

13 Q Do you know if Mr. Fajardo
14 borrowed money from Mr. Vecchia?

15 MR. McNAMARA: Objection.

16 A No, I don't know.

17 Q Do you know if Mr. Fajardo
18 bought a vehicle from Louis Vecchia?

19 MR. McNAMARA: Objection.

20 A That, I heard. I heard someone
21 say that, but I don't know anything about
22 that.

23 Q Do you know if Mr. Fajardo paid
24 for that vehicle?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A I don't know.

3 Q Louis Vecchia treated you
4 fairly; correct?

5 A Me?

6 Q Yes, you.

7 A I don't understand.

8 Q He didn't abuse you on the job;
9 did he?

10 A No.

11 Q You got a paycheck every week;
12 correct?

13 A Yes.

14 Q He didn't call you names; did
15 he?

16 A No.

17 Q He treated you fairly on the
18 job; correct?

19 A Yes.

20 Q Did you ever work for
21 Power Paving Company?

22 A Yes.

23 Q Did you ever get fired from
24 Power Paving Company?

25 A Because there was no work.

1 O. W. Pagoda

2 Q Did you work with Walter Garcia
3 at Power Paving Company?

4 A Yes.

5 Q Did Walter Garcia get fired from
6 Power Paving Company?

7 A That, I don't know. That, I
8 don't know.

9 Q You worked there together;
10 correct?

11 A Yes, but I don't know when he
12 left.

13 Q Suffolk Paving helped you
14 provide for your family; correct?

15 A Yes.

16 Q Louis Vecchia helped you provide
17 for your family; correct?

18 A Yes, because he gave me work.

19 Q Now you're suing him; correct?

20 A I want them to pay me for my
21 hours.

22 Q And you're suing his son too;
23 correct?

24 A I don't know if the owner is his
25 son or it's Louie.

1 O. W. Pagoda

2 Q And you're also suing his wife.
3 Did you know that?

4 MR. McNAMARA: Objection.

5 A No, I don't know that. I don't
6 know if the three of them are the owners of
7 the company. I only know that it's Suffolk
8 Paving. I don't know who the owners are
9 exactly.

10 Q Did you know you're suing
11 Louis Vecchia's wife?

12 MR. McNAMARA: Objection.

13 A No, I don't know that. I don't
14 know if the three are owners or not.

15 Q Did you know you're suing his
16 wife?

17 A No.

18 Q Are you comfortable suing his
19 wife?

20 MR. McNAMARA: Objection.

21 A Well, if the three of them are
22 owners, they're owners of a company, so the
23 three of them should pay.

24 Q Did you ever get a Christmas
25 bonus?

1 O. W. Pagoda

2 A No.

3 Q Never got any bonuses?

4 A Not when I worked there.

5 Before -- they say that before, they used to
6 give them, but when I worked there, they no
7 longer did.

8 Q How much cash did you get from
9 Suffolk Paving?

10 A No, never. Only one day, but it
11 was prevailing wage, and he gave me \$200, but
12 it was just one day. No more after that.

13 Q And you're not looking to be
14 compensated for the time it took you to
15 travel to work; correct?

16 MR. McNAMARA: Objection.

17 A Well --

18 Q Yes or no?

19 A Yes.

20 Q Oh, you do? You want to be
21 compensated for the time that it took for you
22 to drive from your home to the job site?

23 MR. McNAMARA: Objection.

24 A Not from my house. From the
25 yard to work.

1 O. W. Pagoda

2 Q Are you looking for compensation
3 for the time that it took for you to drive
4 from the yard to your home?

5 MR. McNAMARA: Objection.

6 A No, not that. From the yard to
7 the job.

8 Q Including the time that you
9 stopped at the deli; correct?

10 A Five, ten minutes.

11 Q And you want to be paid for that
12 time; right?

13 MR. McNAMARA: Objection.

14 A That wasn't every day. That
15 wasn't every day.

16 Q My question is: You want to be
17 paid for that time; correct?

18 A Well, once I got to the yard,
19 that meant that we were working. It wasn't
20 everyday that we would stop at the deli. I
21 would usually take my food from home.

22 Q But you want to be compensated
23 for the time that you sat outside the deli;
24 correct?

25 MR. McNAMARA: Objection.

1 O. W. Pagoda

2 A What do you mean? To pay me
3 for...

4 Q You want to be paid for the time
5 you sat outside the deli while you and your
6 friends ate egg sandwiches and --

7 MR. McNAMARA: Objection.

8 Q -- drank coffee?

9 A It's just that that wasn't all
10 the time.

11 Q Really? Because they say that
12 that was every day.

13 MR. McNAMARA: Objection.

14 A Every day? Well, like I said,
15 we were in different groups. I don't know
16 what the rest of them do. I don't know about
17 the rest of them. I can't tell you if they
18 would stop every day.

19 Q So you want to be paid from
20 Monday through Friday from the time you got
21 to the shop, even though you only had to go
22 to the shop for a ride to the worksite; is
23 that correct?

24 MR. McNAMARA: Objection.

25 Q Correct?

1 O. W. Pagoda

2 A Yes.

3 Q Even though every day, Monday
4 through Friday, you'd go to a deli and eat
5 your egg sandwiches and drink your coffee?

6 MR. McNAMARA: Objection.

7 A No, not me.

8 Q Others, though; right?

9 A Others, but not me.

10 Q And you just have to wait there
11 for them; correct?

12 A Yes.

13 Q That wasn't your fault?

14 A It wasn't my fault.

15 Q And lunch, too, you want to get
16 paid for; right?

17 MR. McNAMARA: Objection.

18 A Yes, because we wouldn't take
19 lunch.

20 Q Even though all your fellow
21 coworkers said they did?

22 A That we would take lunch?

23 Q Yes.

24 A When we would eat lunch, we
25 would go get lunch at 2:00, 2:30, 3:00 p.m.,

1 O. W. Pagoda

2 and we would eat in five or ten minutes when
3 we ate.

4 Q Really? They wouldn't send one
5 guy to go and get sandwiches for everybody?

6 MR. McNAMARA: Objection.

7 A That was on occasion, not
8 always, very few times. I would always take
9 my food from home.

10 Q You told me before that you
11 would get a chicken cutlet sandwich.

12 MR. McNAMARA: Objection.

13 Q Do you remember that?

14 A Yes, but not every day. That
15 could be once in awhile.

16 Q Sometimes you would eat ham?

17 MR. McNAMARA: Objection.

18 A No, hardly. It's just that I
19 hardly like it. I really don't like it.

20 Q You don't like ham?

21 A No.

22 Q Do you like turkey?

23 A A little, very little.

24 Q Pizza?

25 A Yes.

1 O. W. Pagoda

2 Q You'd rather eat pizza?

3 A Yes.

4 Q Did you ever eat pizza at work?

5 A Not that I recall.

6 Q Did you ever eat pizza with

7 anchovies on it?

8 A Excuse me?

9 Q With anchovies, little salty

10 fish?

11 A I don't know what that is. No,

12 no, no.

13 Q Did you ever eat pizza with

14 pineapple on it?

15 A No.

16 Q They never ordered pizza to the

17 job site?

18 A No.

19 Q Not even when they played

20 soccer?

21 MR. McNAMARA: Objection.

22 A No. Because I wasn't there when

23 they played soccer. I don't know. Not while

24 I was there. I worked there a short time. I

25 don't know what happened before.

1 O. W. Pagoda

2 Q Do you know what happened while
3 you were working there?

4 A Yes, when I was there, I knew
5 what was happening.

6 Q You understand that you're suing
7 Suffolk Paving for an amount that you don't
8 know; right?

9 A Yes, but --

10 Q And you're suing them, and
11 you're telling me that you can't remember any
12 of the days that you worked overtime;
13 correct?

14 A No. How am I going to remember?
15 It's been so long.

16 Q And that you don't remember the
17 days that you actually worked?

18 A No.

19 Q Correct?

20 A I don't remember.

21 Q And you don't remember the
22 projects that you worked on; correct?

23 A No.

24 Q And you didn't understand when
25 you got paid overtime; correct?

1 O. W. Pagoda

2 A Because they hardly did it.

3 Q Right. But when you did get it,
4 you didn't understand it; correct?

5 MR. McNAMARA: Objection.

6 A It's just that they didn't pay
7 me. Maybe the one that you have there...

8 Q Right. The one that I showed
9 you, and you agreed that you got paid
10 overtime on; correct?

11 MR. McNAMARA: Objection.

12 Q It's okay. We know the answer.

13 A Show me that stub.

14 Q I showed you before and you
15 agreed.

16 A Do you have more stubs?

17 Q I have lots of stubs, but I like
18 to hold it back a little bit. I need
19 something for trial.

20 A Okay.

21 Q But you agreed that you got paid
22 overtime before; remember?

23 MR. McNAMARA: Objection.

24 A Yes.

25 Q And that you got a paycheck

1 O. W. Pagoda

2 every week that you worked; correct?

3 A Yes.

4 Q And you never looked at the pay
5 stubs?

6 A Yes, I would see them.

7 Q You would see them, but you
8 never really studied them; correct?

9 MR. McNAMARA: Objection.

10 A (No verbal response.)

11 Q You already answered. We know
12 your answer. Go ahead. You can say it.

13 A Because that stub, I really
14 don't understand that which is on it.

15 Q I know that you don't understand
16 that you got paid overtime. It's okay. It
17 doesn't make you a bad person, but the most
18 important thing is that you be honest now.

19 Every week you got a paycheck;
20 correct?

21 A Yes.

22 Q And those paychecks listed the
23 hours you worked; correct?

24 MR. McNAMARA: Objection.

25 A Yes.

1 O. W. Pagoda

2 Q And you admitted to me that you
3 got a paycheck that showed that you received
4 overtime; correct?

5 MR. McNAMARA: Objection.

6 A I don't remember.

7 Q You don't remember testifying to
8 it just before?

9 A About what, about overtime on a
10 check, a check that had overtime hours? No.

11 Q You have testified about it
12 before.

13 MR. McNAMARA: Objection.

14 Q Stop it. Don't play games. We
15 know the answer. Even your lawyer will tell
16 you that.

17 MR. McNAMARA: Objection.

18 Q Remember testifying before about
19 that check, the check that showed you
20 received overtime?

21 A (No verbal response.)

22 Q Yes?

23 A I'm going to talk to my attorney
24 about that.

25 Q After you answer the question,

1 O. W. Pagoda

2 you can talk to him about that.

3 You remember that you testified
4 that you received a check, and you were paid
5 overtime; you just didn't understand it?

6 MR. McNAMARA: Objection.

7 Q Do you remember that; yes or no?

8 MR. McNAMARA: Objection.

9 Q Yes or no?

10 A Yes.

11 Q Thank you. Do you want to talk
12 to your lawyer now?

13 A Yes.

14 Q Okay.

15 MR. McNAMARA: Is it okay if
16 Madame Interpreter comes with us?

17 MR. ZABELL: It depends on what
18 he has to say.

19 MR. McNAMARA: Well, I'd
20 rather -- that was not --

21 MR. ZABELL: Go speak to him.
22 Get an offer of proof and we'll see.
23 I'll be reasonable with you. I'll be
24 reasonable with you. Don't worry.

25 MR. McNAMARA: Is it okay if

1 O. W. Pagoda

2 Madame Interpreter comes with us?

3 MR. ZABELL: No. Go speak to
4 him, give me an offer, and then we'll
5 see.

6 MR. McNAMARA: An offer of what?

7 MR. ZABELL: Find out what he's
8 got to say. This guy speaks English.
9 He knows. That's why he's smiling at
10 me.

11 MR. McNAMARA: He doesn't speak
12 English.

13 MR. ZABELL: Go speak to him and
14 find out.

15 (Whereupon, a recess was taken
16 from 3:35 p.m. until 3:47 p.m.)

17 MR. ZABELL: Counselor, is there
18 anything you want to discuss with me
19 before we continue?

20 MR. McNAMARA: No, we can
21 continue.

22 MR. ZABELL: Have you advised
23 him of his rights?

24 MR. McNAMARA: Yes, we're fine.
25 We can continue.

1 O. W. Pagoada

2 MR. ZABELL: Are you sure?

3 MR. McNAMARA: Yes.

4 Q Mr. Pagoada, you had an
5 opportunity during the break to speak to your
6 attorney?

7 A Yes.

8 Q Is there anything you want to
9 tell me?

10 A No.

11 Q Are you sure?

12 MR. McNAMARA: Objection.

13 A Yes.

14 MR. ZABELL: Thank you for your
15 time today. I have nothing further.

16 THE WITNESS: Okay, that's it?

17 MR. ZABELL: You may go. Hasta
18 la vista.

19 THE WITNESS: Okay, thank you.

20 (Time noted: 3:50 p.m.)

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A C K N O W L E D G E M E N T

STATE OF NEW YORK)

: ss

COUNTY OF)

I, OSMAR W. PAGOADA, hereby certify that
I have read the transcript of my testimony
taken under oath in my deposition of
September 21, 2011; that the transcript is a true,
complete and correct record of my testimony;
and that the answers on the record as given
by me are true and correct.

OSMAR W. PAGOADA

Signed and subscribed to before me
this ____ day of _____, 2011.

Notary Public, State of New York

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EXHIBITS

<u>DEFENDANTS '</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	Document consisting of a copy of Mr. Pagoada's passport	6
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3	Document consisting of copies of Mr. Pagoada's pay stubs from Payco Industries	129
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C E R T I F I C A T E

I, KAREN M. LaMENDOLA, a Notary Public
in and for the State of New York, do hereby certify:

THAT the witness whose testimony is
hereinbefore set forth, was duly sworn by me;
and

THAT the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related, either by blood or marriage, to any
of the parties in this action; and

THAT I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 29th day of October, 2011.

KAREN M. LaMENDOLA

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ERRATA SHEET

I wish to make the following changes for
the following reasons:

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